FRENCH POLYNESIA

Polynesian Competition Authority

[FREE TRANSLATION]

2019-A-02
Opinion on import and distribution mechanisms in French Polynesia

Published 19 September 2019

The Polynesian Competition Authority,

Having regard to decision no. 2016-DAA-02 of February 18, 2016 concerning an ex officio referral for an opinion on import and distribution mechanisms in French Polynesia, registered under no. 16/001 A ;

Having regard to the Polynesian Competition Code, in particular Article

LP 620-4; Having regard to the other documents in the file ;

Having regard to the public consultation document published by the Polynesian Competition Authority on June 14, 2019;

In view of the contributions received by July 15, 2019;

The rapporteur, the general rapporteur and the government commissioner heard at the meeting of the Polynesian Competition Authority on August 27, 2019;

Representatives of the Vice-Presidency (DGAE) and representatives of the Fédération Générale du Commerce (FGC), the Union des Importateurs de Polynésie Française (UIPF) and the Te Tia Ara consumers' association heard on the basis of the provisions of article LP 630-5 of the French Competition Code;

Adopts the following Opinion:

SYNTHESIS

The Polynesian Competition Authority issues an opinion on the import and distribution mechanisms at work in French Polynesia.

After noting that prices are significantly higher than in mainland France and the French overseas departments, and identifying the various factors that explain this state of affairs, it makes recommendations aimed at improving regulations and market structure, and reinforcing the culture of competition.

Prices significantly higher than in mainland France and the French overseas departments, with widening price disparities

ISPF surveys show that prices in French Polynesia are generally higher than in mainland France, but also higher than in the French overseas departments. In 2016, prices were on average 19% higher for a Polynesian basket of goods and 55% higher for a basket of goods in mainland France, representing an average surcharge of 38.5% versus 25.9% in 2010. These differences are growing, and are particularly high for food products (+47% increase since 2007), which has an even greater impact on the purchasing power of the most modest households, for whom these goods represent a significant proportion of their budget (over 30% compared to 12% for the most affluent households). The fall in food prices in 2018, explained by lower seafood prices, was not enough to close this gap, and food inflation has picked up again in 2019. However, this unfavorable trend coincides with price regulation (PPN and PGC), high market protections and the development of mass retailing, which have therefore failed to moderate the prices paid by Polynesian households.

Price-level determinants

A detailed examination of the cost structure of products shows that the initial purchase price represents only around 27% of the total price of a product, and that approach costs (transport) account for only 8% on average, the same as import duties and taxes (also 8%). The remainder is made up of VAT (13% on average) and the distributors' commercial margin (importers-wholesalers and retailers), which accounts for the largest share of the total price (44%). The remoteness and isolation of French Polynesia do not explain all the additional costs, which are also the result of the regulatory framework instituted over time by the country (notably the taxation of imports) and the structure of the various markets concerned (transport, production, import and retail distribution), which are often not very competitive.

Geographical factors

Because of its geographical location and the small size of its market, which prevents local industry from reaching critical mass when fixed costs are high, French Polynesia is dependent on imports, particularly for consumer goods.

Of these, 28% come from mainland France and 14% from other European Union countries, followed by the United States, China, Australia and New Zealand. Regional channels are therefore not favored. This is particularly true for agri-food products, electrical equipment and pharmaceuticals. Freight for consumer goods is essentially maritime, accounting for 99% of the volume and 83% of the value of imports. However, the freight market from Europe is highly concentrated, and the port of Papeete, which can only accommodate medium-sized container ships due to the depth of the Papeete pass and quay, does not allow shipping companies to achieve economies of scale in a context of ever-increasing ship size. Without investment in port infrastructure, there is a risk that the destination will be marginalized in favor of more systematic transshipment to New Zealand. However, there are ways of financing the port, notably through the toll tax, which is levied on imports and represents 1.25% of the CIF price of imported products, but which has been diverted from its intended use since, although initially intended to finance port investments, it in fact finances the port's operations, as the port is unable to increase its own revenues and, in particular, the indemnities for occupying the port's public domain, which are often set at very favorable levels for its occupants.

The cost of cargo handling (stevedoring) also appears to be higher than in similar ports. Since 1987, this service has been provided by three companies, each with its own staff and equipment (notably lifting cranes), without any competitive tendering. This activity is also subject to regulated tariffs. There is therefore no competition on the market (in terms of price and quality of service), nor competition for the market (when the public service delegation is renewed).

As a result, while routing to French Polynesia is not the main factor behind the additional costs, on the one hand its cost could increase in the future without developing the port to accommodate deeper-draught vessels, and on the other, certain costs can be reduced, notably those of stevedoring.

Geography also has an impact on access to land in Tahiti, the main geographic market, which is scarce and therefore expensive. There have been reports of companies freezing their land holdings, thereby hindering competitive development.

Regulatory factors

French Polynesia has introduced an extensive arsenal of market protection measures designed to safeguard domestic industrial and agricultural production. Imports are subject to both tariff barriers (around twenty import duties and taxes, which account for almost 30% of the CIF value of imports, but much more on certain products, notably those subject to TDL or specific taxes) and non-tariff barriers (import bans or quotas, particularly in the agricultural sector). Other regulatory provisions are also likely to have an impact on prices: price regulation, which the authority's opinion of April 2, 2019 on basic necessities (PPN) showed to have price-raising effects in particular; local tax exemption, which favors already powerful players to the detriment of new entrants; restrictions on foreign direct investment, which limit the market entry of new operators or producers; outdated and unreviewed health regulations with sometimes anti-competitive effects.

The resulting high price of goods is not conducive to an optimal allocation of resources, to the benefit of sectors in which the Polynesian economy has comparative advantages. It therefore has a significant negative impact on economic activity and employment.

The local development tax (TDL), as currently implemented, is particularly penalizing. While its yield is low, it discourages the import of certain products and, rather than encouraging competition on the merits, favors the creation of a rent for local producers, who have no incentive to innovate or control their production costs. In addition, the tax base is too broad, and includes imported goods for which there are no local production equivalents, or protects goods for which local value-added is low (packaging or assembly activities, for example).

The system for setting fruit and vegetable import quotas through the agricultural conference also appears to be inefficient. In particular, demand forecasts are underestimated, supply forecasts overestimated, and the unpredictability of the quotas allocated limits the ability of importers-wholesalers to buy at lower cost. The result is high prices and frequent shortages, with no positive effect on the coverage of needs by local production.

Market structure

As far as local producers are concerned, while the small size of the market already favors a certain concentration of producers, this phenomenon is exacerbated by the high degree of protection they enjoy, particularly in the agri-food industry. This gives rise to rent-seeking situations, leading to high prices and a lack of incentives to improve production quality or diversity. This concentration is reinforced by the vertical integration of certain players, in import, production and distribution activities.

As far as imports are concerned, while the so-called "short" circuit - in which retailers are supplied directly by the manufacturer to its storage platforms, via its central purchasing office where appropriate - is often adopted by supermarkets for their p r i v a t e labels, the so-called "long" circuit is often used by retailers for their own brands.
which involves passing through an intermediary known as an "importer-wholesaler" or "importer-wholesaler".
The "brand agent" channel remains in the majority. This channel is designed to generate economies of scale and provide services to distributors (sourcing, shelving, advertising, promotions, after-sales service). In this channel, importers often benefit from exclusive import rights for one or more brands, either *de jure* (embodied in a written contract) or *de facto (*without a formal agreement, but with the supplier's choice of a preferred distributor who alone has access to the brand's full product range, promotional budgets or product training), which limits intra-brand competition between importers. In a small, concentrated economy, where inter-brand competition is structurally weak, there is little incentive to pass on the benefits of economies of scale to the consumer. Thus, even if the food import sector appears relatively dispersed, the importers benefiting from these exclusivities have little incentive to encourage competition between different suppliers. Their market power is further strengthened when the exclusive importer is also a retailer, as is often the case in French Polynesia. For this reason, all French overseas territories except French Polynesia (since 2018) have banned such agreements in principle.

With regard to retailing, despite the persistence of a network of small stores, particularly in rural Tahiti and the islands, the degree of concentration is high in chain stores, particularly in the Papeete area, where the majority of food purchases are made from supermarkets. According to the many players interviewed during the investigation, the leading operator is able to take advantage of this to set reference prices for the entire market, at a high level, in line with the

willingness to pay of the most affluent consumers. The other chains align themselves with these prices, as they are unable to sustainably compete on price. As in production, vertical integration also occurs. However, the possibility of challenging a dominant position that raises competition concerns due to high prices or margins, by issuing structural injunctions if necessary, disappeared from the Polynesian legal framework with the modification of the Competition Code (Law of August 9, 2018), leaving virtually no chance of acting on the current structure of markets to make them more competitive.

It is also clear from the comments of many of the economic players consulted that there is little culture of competition and consumer rights in French Polynesia. In particular, consumer associations are few in number and without permanent public subsidies, and reports of anti-competitive practices to the DGAE or the Authority are rare. As a result, consumer information is inadequate, all the more so as the survey of prices charged by the various chains ("météo des prix"), which used to be monthly and public, was only partially relaunched in March 2019 and covers a reduced number of products, enabling players to exploit it by charging call prices on the products on the list and thus confusing consumers' knowledge of the general level of prices.

The main proposals

With regard to import regulations (proposals 1 to 21), short distribution channels could be encouraged by aligning the customs duties of neighbouring countries with those enjoyed by the European Union, and by factoring the cost of French-language labelling into the production costs of PPN importers. Non-tariff barriers, for their part, could be transformed into less dissuasive tariff barriers, and the agricultural quota system could be radically reformed, in order to reduce shortages and the high price of these products, while at the same time putting in place mechanisms to favor importer-wholesalers who also use local production. Sanitary and technical rules also need to be assessed for their intrinsic relevance and anti-competitive effects. For its part, the planned reform of the TDL could provide the opportunity for an ambitious modification of this system, allowing for regular assessment of the effects of protection, reducing the rates and duration of protection where necessary, and introducing counterparts to protection for its beneficiaries, with verifiable criteria linked to performance, innovation, job creation, the creation of a sector or the "transformation rate" of protected products.

Other regulations affecting prices (proposals 22 to 26) could also be amended. Price regulation could be targeted on a more limited list of products, particularly in Tahiti. Foreign investment regulations could be made more flexible, and local tax exemptions improved to take account of the competitive impact of proposed projects.

With regard to transport (proposals 27 to 30), the main priority is to make a strategic choice regarding the port's capacity developments, in order to make it more attractive to

shipping companies. The development of the port's revenues, in particular through the revision of port occupancy fees, and the introduction of competitive tendering for stevedoring services, also appear likely to reduce prices.

With regard to market structure (proposals 31 to 41), opening them up is an essential complement to the other aspects. Indeed, while changing regulations should reduce rents and lower the cost of imports, only a more competitive market structure can ensure that these gains are redistributed to the consumer and not captured by intermediaries. All measures designed to remove barriers to market entry, from upstream to downstream, and to diversify import and distribution channels, are therefore likely to boost consumer purchasing power, as well as promoting the attractiveness of the country and employment. For this reason, the abolition of certain measures by the Law of August 9, 2018 could be subject to reassessment, and exclusive import agreements in particular, whether de jure or de facto, could be subject to restrictions, a fortiori when the importer is also a retailer, or be prohibited once again. Specific measures could also be adopted to discourage the freezing of land by operators, or with a view to encouraging the pooling of small players (producers, notably agricultural; independent retailers; consumers, notably for their online purchases).

Lastly, French Polynesia's competitive environment (propositions 42 to 46) would benefit from greater stakeholder involvement and information, notably through the strengthening of consumer associations and the introduction of more ambitious price comparison tools.

INTRODUCTION

1. Pursuant to article LP 620-4 of the French Competition Code, the Polynesian Competition Authority may take the initiative of seeking advice on any matter concerning competition, and may recommend that the government implement the measures necessary to improve competition in its markets. In applying this article, the Authority can only give its opinion on general competition issues. It is not its role to assess, let alone qualify, individual behavior on a market with regard to articles LP 200-1 or LP 200-2 of the French Competition Code. In fact, only a contentious referral, initiated by the Country, the players or the Authority itself, accompanied by the implementation of the adversarial procedure provided for in articles LP 630-2 et seq. of the same code, would enable the legality of a practice to be assessed in the light of the provisions relating to cartels or abuses of a dominant position.

2. The French Polynesian Competition Authority has issued an opinion[1] on the issue of product import and distribution mechanisms in French Polynesia. In its referral, the Authority states that *"the purpose of this general study is to identify the main issues contributing to the lack of competition and the high cost of living in French Polynesia. It will make it possible to identify or confirm the specific, in-depth examinations that it would be useful to carry out in different sectors"*.

3. This notice concerns everyday consumer products. The conditions for importing and/or distributing products and services distributed through other channels, such as banking services, telephony or energy, are not addressed. However, many representatives of local producers, importers-wholesalers and distributors have stressed that the high cost of these goods and services is likely to increase production costs and push up the price of everyday consumer goods.

4. To conduct its investigation, the Authority consulted widely with the main players in the sector and their representative bodies (carriers, importers, producers, retailers and government authorities), by means of questionnaires and hearings. It also held a public consultation between June 14 and July 15, 2019.

5. The approach adopted in this opinion consists firstly in identifying the products for which action on prices is most necessary, in particular those for which the additional costs are most significant and those which account for a large share of household budgets (I). The opinion then aims to identify the main reasons for the higher cost of everyday consumer goods in French Polynesia compared with mainland France and other overseas collectivities, distinguishing between the intrinsic characteristics of the Polynesian economy, government intervention and the specific operation of the transport, production, supply and distribution markets (II). Finally, it explores possible ways of reducing these costs and improving the operation of Polynesian markets (III).

[1] Decision no. 2016-DAA-02 of February 18, 2016.

I. THE FACTS: HIGH PRICES PENALIZING LOW-INCOME HOUSEHOLDS

6. Comparisons of consumer prices and price index trends show that price levels in French Polynesia are higher than in mainland France and the French overseas departments and regions (hereinafter "DROMs"), and comparable to those in New Caledonia, but that the gap is widening despite the recent decline in food prices.

A. HIGH CONSUMER PRICES COMPARED TO MAINLAND FRANCE AND OVERSEAS DEPARTMENTS AND REGIONS

7. In 2010 and 2015, Insee[2] conducted two surveys to measure price differentials between metropolitan France and the DROMs. Similar surveys were subsequently carried out by Isee in New Caledonia[3] in New Caledonia and by the ISPF[4] in French Polynesia. The comparison covers all market goods and services consumed by households in France. However, certain products that are not, or only marginally, consumed overseas are not taken into account, such as heating oil, town gas and rail transport. The aim of these surveys is to compare the prices of the same basket of products and services, representative of household consumption. The measurement therefore focuses on price differentials between comparable products[5] independently of household income and purchasing power. However, lifestyles and consumption patterns in the French overseas territories are not identical to those in mainland France. For this reason, two complementary approaches have been adopted by statistical institutes to measure price differentials, depending on whether one refers to the structure of consumption in mainland France or locally (Laspeyre indices). Finally, a synthetic measure, the Fisher-type index, which is the geometric mean of the preceding indices, has made it possible to combine these two approaches and take into account the way consumers adapt their consumption baskets when prices are modified. These studies show that, based on Polynesian consumption habits, a Polynesian household would pay 19% less for its typical basket of goods and services if it bought them in mainland France in 2016, compared with 4.7% less in 2010. The gap is even greater for a basket of goods corresponding to consumption habits in mainland France, since the overall price difference between French Polynesia and mainland France reached 55% in 2016, whereas it was already 51.2% in 2010. Using the synthetic view (Fisher-type index), prices in French Polynesia were 38.5% higher overall in 2016 than in mainland France (versus 25.9% in 2010). The situation therefore deteriorated overall between 2010 and 2016.

8. If we compare these price levels with those of the other overseas territories, we see that while the price gap with mainland France is close to that recorded in New Caledonia, it is far greater than that observed in the DROMs, whatever the index used.

[2] National Institute for Statistics and Economic Studies.
[3] Institute of Statistics and Economic Studies.
[4] Statistical Institute of French Polynesia
[5] The choice of goods and services is the result of a compromise between homogeneity (to ensure comparability between territories) and representativeness (to retain the most widely consumed products). Differences are calculated on the basis of baskets. They therefore do not necessarily reflect the differences that may be observed at the level of a specific product.

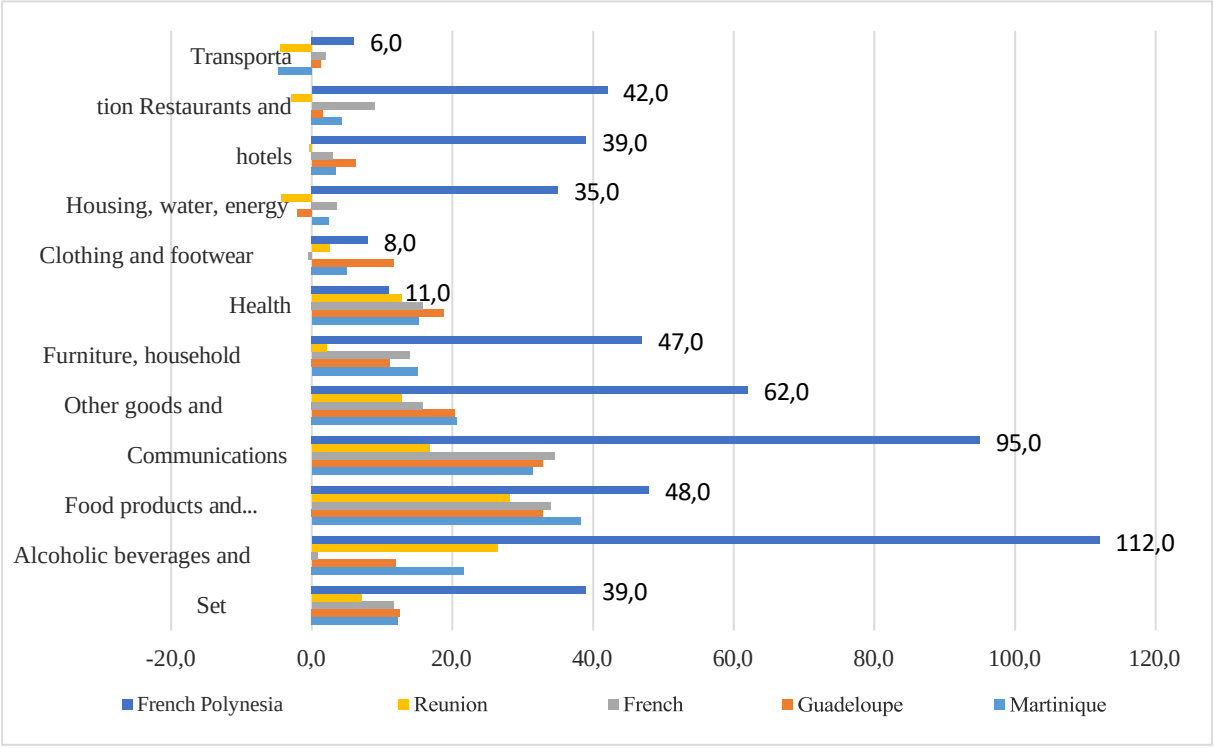
Table 1: Price differentials between overseas France and mainland France

	year	Laspeyre index		Type index Fisher
		Overseas / mainland France Overseas basket	Overseas/Mainland Metropolitan basket	Overseas / metropolis
French Polynesia	**2010** **2016**	**4,7** **19**	**51,2** **55,0**	**25,9** **38,5**
New Caledonia	2010 2015	17,3 8,5	48,6 44,1	34,0 33,0
Martinique	2010 2015	2,9 7,1	16,9 17,1	9,7 12,3
Guadeloupe	2010 2015	2,2 7,5	14,8 17,0	8,3 12,5
French Guiana	2010 2015	6,4 6,8	19,6 16,2	13,0 11,6
Reunion Island	2010 2015	0,4 3,6	12,4 10,6	6,2 7,1

Source: Insee, Isee, ISPF

9. In addition, there are particularly significant disparities between different product categories in French Polynesia.

Figure 1: Price differentials with mainland France in overseas France (Fischer weighted index)



Source: Insee and ISPF data

10. Price differences between French Polynesia and mainland France, but also with the French overseas departments and territories (DROMs), are very significant:

- for foodstuffs and non-alcoholic beverages, even though price differentials with mainland France are very significant in most territories (Fisher-type index of +48%, compared with +28.1% to +38.2% in the French overseas departments and territories); only New Caledonia has higher spreads (+65.4%),
- for alcoholic beverages and tobacco (112% more expensive than mainland France according to the Fisher-type index, compared with +0.9% to +26.4% in the DROMs),

- communications (+95% compared with +16.7% to +34.5% in the French overseas departments and territories),
- furniture, household appliances and home care (+47%, compared with +2.2% to 15% in the French overseas departments and territories),
- leisure and culture (+39% versus -0.3% to +6.2% in the French overseas departments and territories).

11. On the other hand, the differences with mainland France are less significant for clothing and footwear (+8%), healthcare (+11%) and transport (+6%). This is also the case in the French overseas departments and territories.

B. A GROWING PRICE GAP, ESPECIALLY FOR FOOD PRODUCTS

12. For food products, the gap with mainland France has widened since 2010. Based on Polynesian consumption habits, in 2016, a household would pay 18% less for its typical basket of food products if it bought them in mainland France, compared with 11% in 2010. Using a synthetic view (Fisher-type index), food prices in French Polynesia in 2016 were 48% higher overall than in mainland France (versus 40% in 2010).

Table 2: Food price differentials between French Polynesia and mainland France

	year	Laspeyre index		Type index Fisher
		Overseas / Mainland France Overseas basket	Overseas/Mainland Metropolitan basket	Overseas / metropolis
French Polynesia	2010 2016	11 18	75 81	40 48

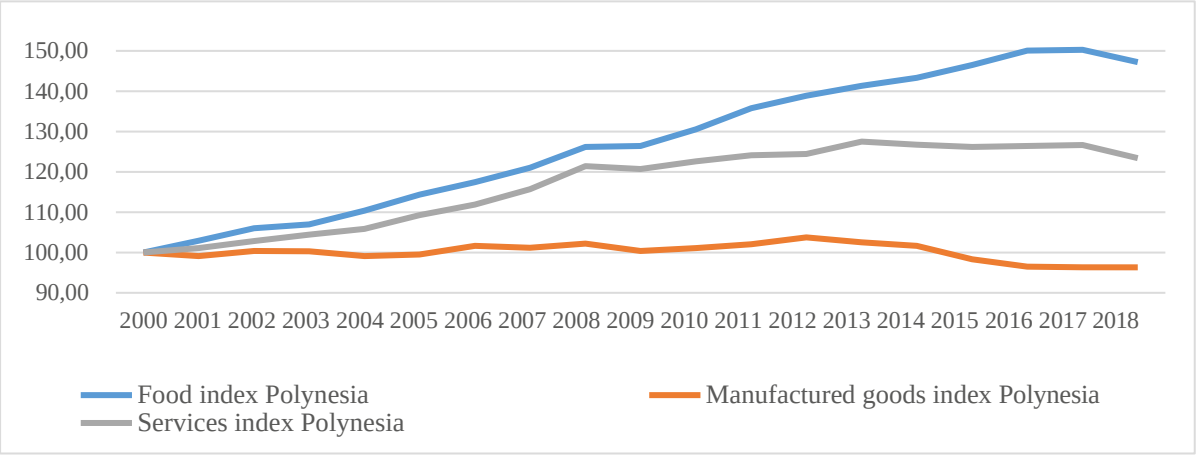
Source: Insee, ISPF

13. This observation is supported by an examination of trends in the consumer price index (hereafter "CPI"), which is the instrument used to measure inflation. It is used to estimate the average change in prices of products consumed by households between two given periods. It is a synthetic measure of price trends for products of constant quality.

14. The CPI can be broken down into indices for food, manufactured goods and services. An examination of each of these components reveals distinct trends, with the "food" index rising sharply. While the CPI for manufactured goods has fallen since 2000, the other two indices - services and food - have risen by 23% and 47% respectively. In particular, the food index, which was relatively close to the services price index until 2008, "stalled" at that date and grew rapidly and continuously until 2016. It has thus strongly diverged from the general price index (+47% since 2007 vs. +35% for the general price index).

15. However, it has stabilized over the past two years, and food prices even fell in 2018, pulled down by a 13.1% drop in seafood prices.

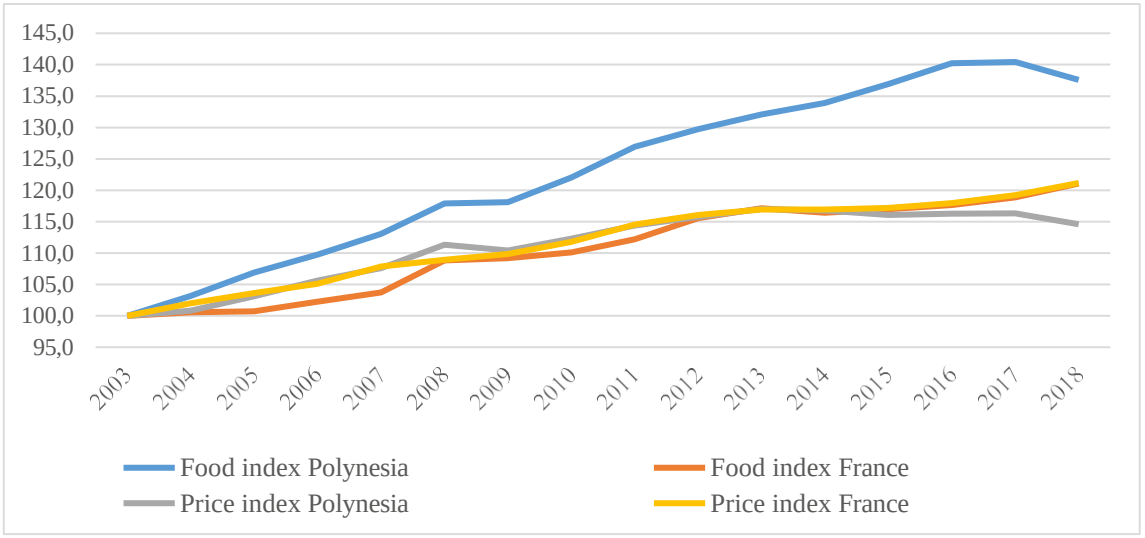
Figure 2: Decomposition of the CPI between 2000 (base 100) and 2018



Source: Insee and ISPF data

16. This particularity of food products is confirmed when comparing inflation in mainland France and French Polynesia. Over the past 15 years, prices have risen slightly less rapidly in French Polynesia than in mainland France, but the index for food products has risen much more rapidly and independently in French Polynesia (by 37% since 2003, compared with 21% in mainland France), whereas in mainland France, it has followed the overall trend.

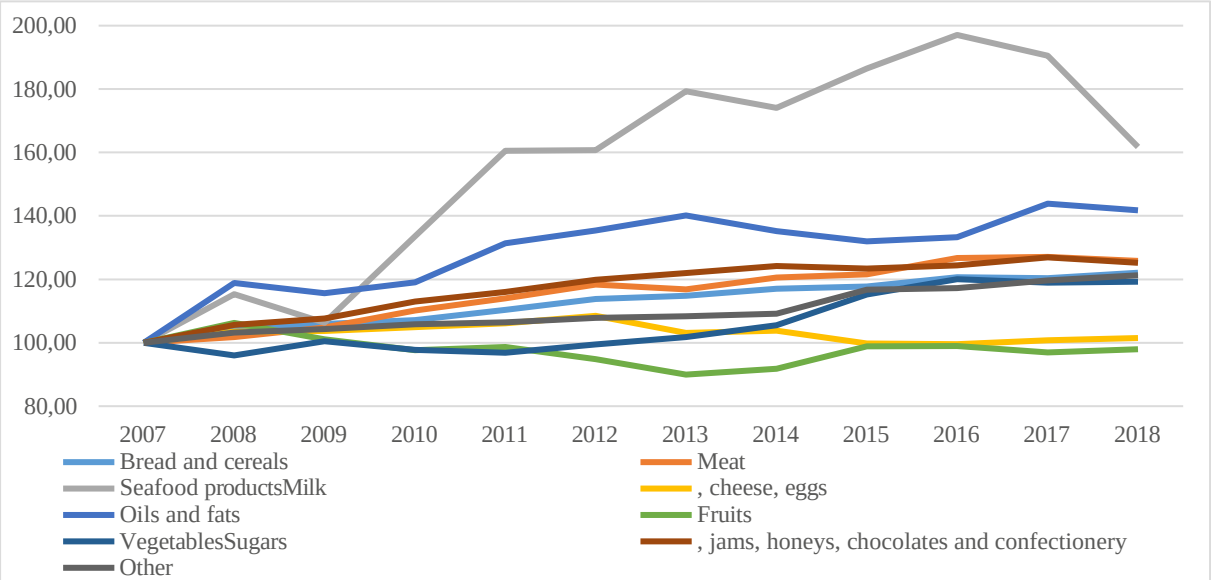
Figure 3: Consumer price index (general and food) in mainland France and French Polynesia between 2003 (base 100) and 2018



Source: Insee and ISPF data

17. Within food products, trends over the last 10 years have been mixed. While the prices of dairy products, eggs and fruit have remained stable, there has been a very significant increase (+60% and +40% respectively) in seafood products and oils and fats, as well as a significant rise in the price o f vegetables, meat and sweet products (+20% over 10 years). However, seafood prices fell sharply in 2018 (-15%) and other prices stabilized, leading to a decline in the general food index.

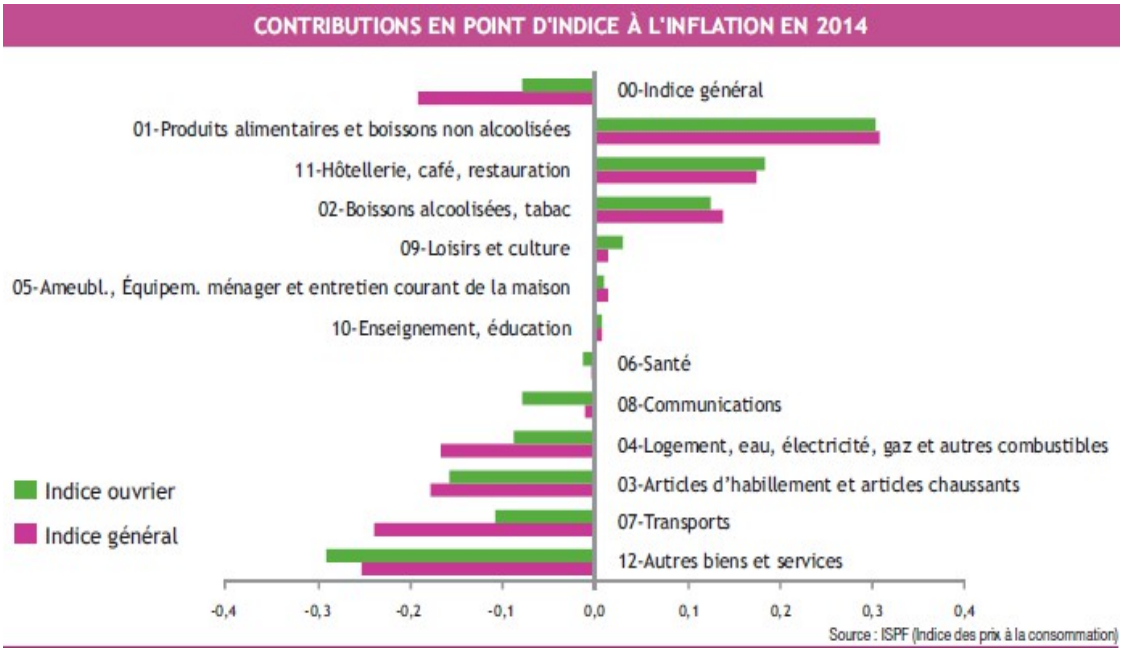
Figure 4: Trends in food prices



Source: ISPF data

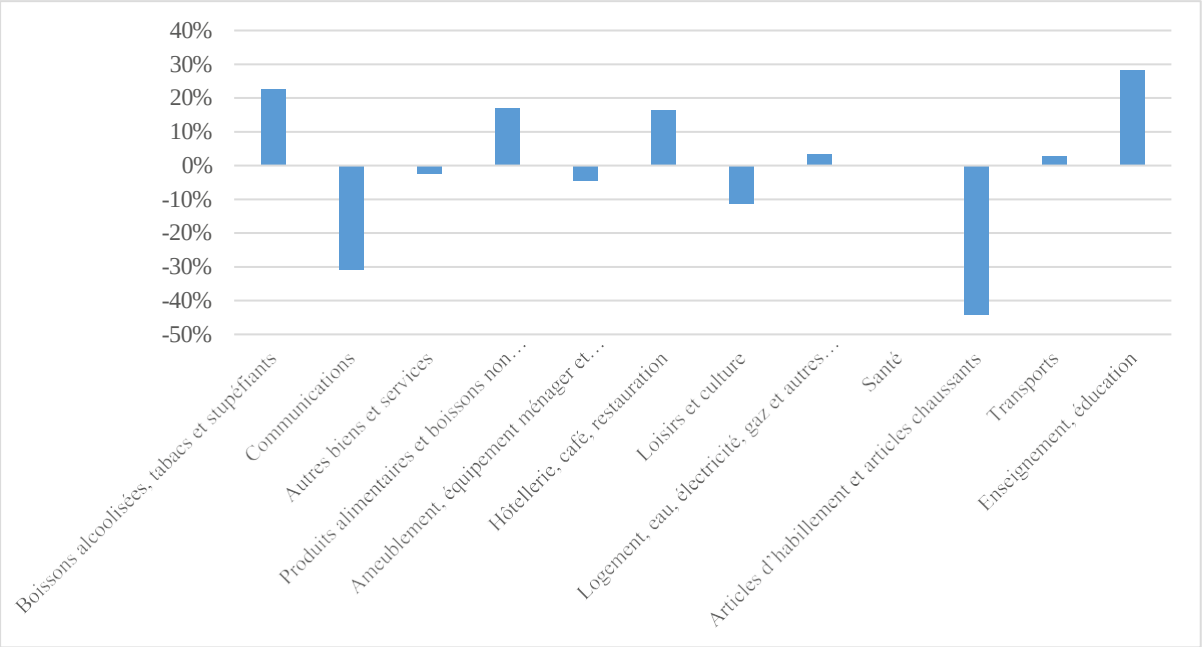
18. However, rising food prices are a major contributor to inflation in French Polynesia. Indeed, the structure of the general index, established by the ISPF, takes into account the specificities and consumption habits of Polynesians. The share of food and non-alcoholic beverages in household spending is 1.5 times higher in French Polynesia than in mainland France. The general price index is therefore highly dependent on changes in food prices.

Figure 5:Contribution of main expenditure items to inflation in French Polynesia (2014)



19. Other items (fig.6) to have seen positive and significant price evolutions are hotel and catering expenditure (closely linked to the cost of food products), alcoholic beverages and education-related expenditure. On the other hand, the cost of goods and services for communications, clothing and leisure and culture declined.

Figure 6: Price variation over the last 10 years (2008-2018) by the twelve divisions (COICOP) of the consumer price index



Source: ISPF data

20. Outside the food sector, a number of price cuts have recently been observed. According to the Institut d'émission d'outre-mer (hereafter "IEOM"), these are largely due to the opening up of markets to competition, notably in mobile telephony and air transport. Indeed, while the consumer price index fell by 0.7% on average in 2018, *"the main contributors to the decline were food prices (-1.9% year-on-year) and above all communications prices (-21.7%), which resulted from increased competition between cell phone and Internet access operators"*, and there was a reduction in the price of *"air transport (-7%), following the arrival of a new airline on Polynesian routes"*.[6] Paradoxically, the unfavorable trend in the Polynesian food price index has taken place against a backdrop of an increase in the list of products with regulated prices or margins, and the growth in the number of mainly food-based supermarkets, which might have been expected to moderate prices.[7] A large number of basic products have not been protected from inflation, despite a proactive policy of price control. In fact, the trend since 2016 towards price stabilization, or even reduction, coincides with a more open market (concomitant with the entry into force of the 2015 country law on competition in particular).

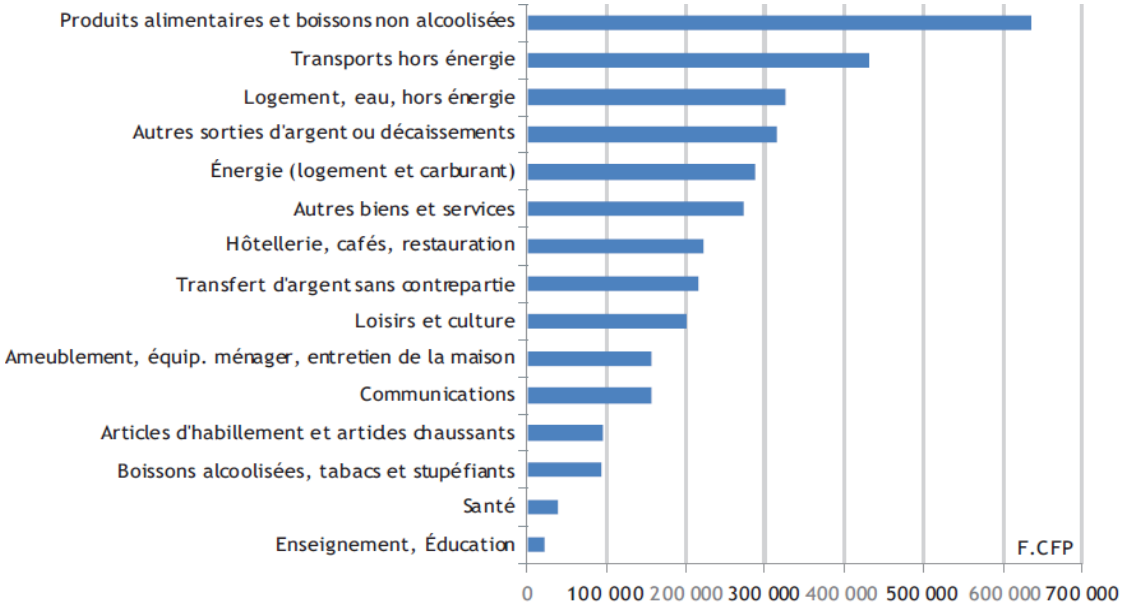
[6] IEOM, *Conjoncture économique*, n°274, April 2019, "The economy of French Polynesia in 2018".

[7] Some of this can be explained by variations in the prices of raw materials, freight and exchange rates. But food prices have been rising steadily over the past 10 years, while exchange rates and commodity prices have been much more chaotic, and freight prices have tended to remain stable.

C. GREATER IMPACT ON LOW-INCOME HOUSEHOLDS

21. Food is the main source of expenditure for Polynesian households, with the strongest growth in prices.

Figure 7: Spending by household and consumption item



Source : ISPF - Étude Budget des Familles 2015.

22. What's more, the lower the household's income, the higher its food expenditure: 31.6% of expenditure for households earning less than 150,000 CFP francs a month, compared with 12.8% for those earning more than 600,000 CFP francs. These populations are therefore particularly affected by high prices. Although self-consumption, particularly on islands other than Tahiti, can partially offset these effects, it is gradually declining.[8]

Table 3: Expenditure items by household income

Unité : %

Nature de la dépense	< 150 000	Entre 150 000 et 299 999	Entre 300 000 et 449 999	Entre 450 000 et 599 999	600 000 et +	Ensemble
Alimentation	31,6	24,6	19,6	16,9	12,8	18,3
Alcool et tabac	4,0	3,2	3,2	2,6	2,1	2,7
Habillement	3,1	3,0	3,0	2,9	2,5	2,8
Logement	17,5	16,6	14,0	13,1	12,7	14,1
Équipement du logement	4,7	3,5	3,7	4,1	5,5	4,5
Santé	1,1	1,0	1,2	1,1	1,2	1,1
Transports	10,3	13,6	16,3	14,9	18,5	16,0
Communications	4,9	5,4	5,4	4,7	3,6	4,5
Loisirs et culture	3,8	4,3	5,1	5,7	7,1	5,8
Éducation	0,5	0,5	0,5	1,1	0,6	0,6
Hôtels, cafés, restaurants	5,7	6,0	6,2	6,8	6,7	6,4
Autres biens et services	7,1	8,4	8,4	8,0	7,5	7,9
Transfert	4,4	5,6	5,7	7,2	6,7	6,2
Prêts et remb. d'emprunts	1,2	4,3	7,8	11,0	12,5	9,0
Ensemble	100,0	100,0	100,0	100,0	100,0	100,0

Source : ISPF (EBF 2015)

[8] While it represented 8% of household consumption in 2015, it was 11% in 2000. However, it still accounts for 24% of food products consumed, including 72% of fish and 68% of fruit (ISPF, Points forts n°07, L'autoconsommation demeure une aide importante pour les budgets modestes, Sept. 2017).

23. However, the Polynesian market is characterized by strong inequalities between consumers. The Gini index, a synthetic indicator measuring monetary inequality, is 0.40[9] in French Polynesia, i.e. a level of inequality comparable to that of certain countries with a reputation for high levels of inequality, such as the United States (0.41) or certain South American countries. The index level is close to that of New Caledonia (0.42), but well above that of metropolitan France (0.29). According to the French Development Agency[10] the relative monetary poverty rate was 19.7% in 2009 in the Windward Islands (compared with 7.5% in mainland France), meaning that one household in five had an income per consumption unit below the poverty line. What's more, the wealthiest 20% of households in the Windward Islands receive almost half (47%) of the total income of all households, while the least well-off 20% receive 6%. In addition, there are major disparities between archipelagos and sectors. For example, while the average full-time salary in 2018 was 341,572 F CFP in the Iles du Vent, it was only 235,542 F CFP in the Îles Sous le Vent, 221,752 F CFP in the Australes, 215,032 F CFP in the Marquesas and 201,715 F CFP in Tuamotu-Gambier. This difference is mainly due to the concentration of private and public companies in the Windward Islands, which are home to nearly 75% of the population.

24. Lastly, while the guaranteed minimum wage (SMIG) has undergone several successive revaluations, most recently in October 2014[11] and now stands at 152,914 F CFP per month, this amount, which is more or less the same as in New Caledonia, is lower than in the overseas departments and regions (except Mayotte) and mainland France.

Table 4: Comparison of minimum gross monthly salaries

Overseas departments, regions and communities	***Gross minimum wage (in* F CFP)**		**Legal working hours**
French Polynesia (2014)	152 914	Difference with PF	39
New Caledonia (2018)	156 568	+2,4 %	39
Wallis and Futuna (2014)	90 000	-41,1 %	39
Guadeloupe, Martinique, French Guiana, Reunion, Saint Pierre and Miquelon. et-Miquelon, Saint-Barthélemy, Saint-Martin (2019)	181 530	+18,7 %	35
Mayotte (2019)	137 007	-10,4 %	35
Metropole (2019)	181 530	+18,7 %	35

Source : APC

25. This income inequality, which is greater than in mainland France, has another consequence. Since the 1960s and the arrival in French Polynesia of the Centre d'expérimentation du Pacifique (hereinafter "CEP"), a significant proportion of households have high incomes and a greater willingness to pay high prices. This is particularly true of households from metropolitan France, who wish to maintain their consumption habits, civil servants and Polynesians with high property incomes. We can thus observe a differentiation in demand between, on the one hand, modest consumers likely to buy only low-priced products, and on the other, more affluent consumers, whose demand is less sensitive to price variations. This characteristic seems to have an influence on companies' pricing policies, leading them to set high prices, particularly for certain food products or other goods such as cars or rents. Indeed, faced with a small, weakly competitive market, the companies often prefer to focus on this customer segment, which is

11

9 The closer this index is to 1, the greater the inequality.

10 AFD, *Working Paper No. 103*, November 2010, "Approaches to poverty in French Polynesia: results and contributions of the 2009 living conditions survey".

11 Order no. 1348 CM of September 26, 2014 raising the mandatory interprofessional guaranteed minimum wage (SMIG) with effect from October 1er 2014.

more profitable due to its high willingness to pay, rather than aiming to increase sales volumes by lowering prices. In other words, they compensate for lower volumes with high margins per unit sold. This trend, which is detrimental to consumers' purchasing power, was frequently highlighted during the investigation of this opinion. As a result, the most modest households are effectively deprived of the possibility of purchasing certain goods. The direct consequence of income inequality is an erosion of purchasing power for the majority.

26. The share of food products in the expenditure of the most modest households, the high level of inequality in French Polynesia, and the alignment of the pricing policy of some companies with the willingness to pay of the most affluent households, mean that the high level of prices is particularly penalizing for the most modest households.

II. THE DETERMINANTS OF HIGH PRICES

27. Prices in French Polynesia are high, not only in comparison with mainland France, but also with other French overseas departments and regions. This situation is due to the geographical location of French Polynesia (A), but also to the various regulations affecting prices (B) and the structure of the markets for the transport, supply and retailing of everyday consumer goods (C).

A. FACTORS LINKED TO POLYNESIAN GEOGRAPHY

28. French Polynesia is what we call a "small island economy", characterized by its small size, insularity and remoteness from major markets. This imposes major constraints on the development of certain activities. In particular, the narrowness of its market does not encourage economies of scale and encourages high prices, to the detriment of the consumer. The small size of the country's landmass also creates a particularly strong land constraint, likely to hinder the development of competition in activities requiring large surface areas (storage and distribution, for example).

1. THE GEOGRAPHICAL PARTICULARITIES OF FRENCH POLYNESIA: DOUBLE INSULARITY

a) Geographical remoteness from mainland France and major economic areas

29. French Polynesia is characterized by its geographical isolation, being located 18,000 km from mainland France and over 4,000 km from the major Pacific metropolises (Auckland, Honolulu and Sydney).



30. While New Caledonia can rely on its proximity to the Australian and New Zealand markets, French Polynesia is more isolated in the Pacific region, even if it has its own market. It remains on the maritime trade routes between Oceania and America. Ships taking a direct route from mainland France make the journey in around a month, and in a week from New Zealand. And yet, sea freight is by far the main means of transporting goods, with air transport reserved for certain low-weight, high value-added products.

b) A small population unevenly distributed over a vast territory

31. As of August 2017, the population of French Polynesia stood at 275,918, scattered across 118 islands in 5 archipelagos, covering a land area of 4,167 km² scattered across 2,500,000 km² of ocean.[12] French Polynesia is therefore a much smaller market than Reunion Island, which has a population of around 850,000, and Guadeloupe and Martinique, each with almost 400,000 inhabitants. On the other hand, its population is equivalent to that of New Caledonia, with 268,000 inhabitants.

32. This population is very unevenly distributed across the territory: the Société archipelago (comprising the Îles du Vent and Îles Sous-le-Vent) is home to the largest island, Tahiti, and its capital Papeete, which is also the economic center of French Polynesia. The Windward Islands are home to over 75% of the community's inhabitants (up from 73.8% in 2012). The Marquesas archipelago comprises twelve islands stretching 350 km from north to south. Only six are inhabited, by a total of 9,346 people in 2017. The Australes archipelago is made up of five high islands, each constituting a commune. It has a population of 6,965. The Tuamotu-Gambier archipelago comprises 17 communes and 85 islands, inhabited by 16,881 people.

[12] IEOM, *French Polynesia Annual Report 2017*, June 2018.

Table 5: Population of Polynesian archipelagos (2017)

Archipelago	Population	%
Windward Islands	207 333	*75,1 %*
of which Papeete conurbation [13]	*148 451*	*53,8 %*
Leeward Islands	35 393	*12,8 %*
Tuamotu-Gambier	16 881	*6,1 %*
Marquesas Islands	9 346	*3,4 %*
Australes	6 965	*2,5 %*
Total	**275 918**	***100 %***

Source: ISPF, census data 2017

33. Most of the population is thus concentrated on the Windward Islands, particularly in the Papeete conurbation, with the rest living far from this center of activity. The journey between these islands can take up to 6 hours by air. Apart from Tahiti, the Polynesian islands are thus doubly insular, with distribution centers concentrated on Tahiti, and any form of connection with mainland France or another archipelago only possible via the main island. This small population, scattered over a territory the size of Europe, inevitably increases logistics costs and prices for certain sections of the population.

c) The impact of double insularity on the cost of living

34. The narrowness and sprawl of the Polynesian domestic market have major consequences for prices and the structure of product markets.

35. Firstly, the small size of the Polynesian market means that for many products, domestic demand alone is insufficient to enable local companies to reach an optimal minimum production size. This has a negative impact on production costs and investment, as the narrowness of the market reduces the rate of production capacity utilization and weakens the profitability of invested capital. Secondly, the tightness of the market leads local companies to concentrate their production and marketing resources in order to increase their productive efficiency. However, this process of concentration can be detrimental to competitive intensity. As the OECD points out, *"although all economies face a recurring conflict between efficiency and competitive intensity, this conflict is even more frequent in the particular case of small economies".*[14] As the OECD notes, the limited number of players in most narrow markets can also facilitate the maintenance of cartels and collusive arrangements: repeated interactions between this small number of players reduces the need for the detailed contractual arrangements required to support the implementation of a cartel.[15]

36. In most small economies, international trade - particularly with geographically close neighbours - overcomes some of the disadvantages associated with small markets. Exports enable local companies to sell abroad the surpluses they need to achieve economies of scale, while imports enable them to import at relatively low cost those products which, given the nature and volumes of productive resources required, cannot be efficiently manufactured locally. Finally, foreign companies drive competition in these smaller markets, guaranteeing local consumers a variety of products at prices and quality roughly equivalent to those sold in larger markets.

37. In French Polynesia, however, given its remoteness and dispersion, international trade is unable to compensate for the disadvantages associated with a narrow market. Indeed, although the very

[13] Cities of Papeete, Arue, Faa'a, Mahina, Paea, Papara, Pirae and Punaauia.

[14] *Small economies and competition policy: a background paper*, OECD Global Forum on Competition.

[15] *"In an economy characterized by the power of small circles, it is obviously easy to maintain cartels and other collusive arrangements because when "everybody knows everybody else" there is no need for detailed and difficult-to-manage (vulnerable) contractual arrangements*". (*Small economies and competition policy: a background paper*, OECD Global Forum on Competition, p. 8).

high import rate bears witness to a substantial level of openness, French Polynesia's geographical remoteness from its main source of supply, mainland France, naturally increases the price of imported goods.[16] This, in turn, reduces the competitive pressure they can exert on local or foreign products. In addition, the distance separating French Polynesia from the major economic territories and its small size reduce the incentives for producers to locate there.

2. SA VERY HIGH LEVEL OF IMPORTS, PARTICULARLY FROM MAINLAND FRANCE

a) A high proportion of imports of everyday consumer goods

38. The isolation and small size of the local market mean that imports carry considerable weight in French Polynesia, in the absence of significant local production. As a result, the real coverage rate (ratio of exports to civilian imports) in French Polynesia is just 7.5%.[17] As a result, the country's balance of trade is heavily in deficit and highly dependent on imports.

39. Imports by value are structured as follows:

- 49% relate to consumer goods, i.e. 25% to food, 8% to vehicles and 16% to other consumer goods (household equipment, drugs or clothing in particular);
- 10% of imports are energy products (mainly hydrocarbons);
- other imports (40%) concern capital goods and intermediate goods for businesses.

Table 6: Breakdown of 2017 imports by product family (NES nomenclature)

Recipients	Products	CIF value (M F CFP)		Volume (tons)	
HOUSEHOLDS	A Agricultural, forestry and fish products	3 755	2,2 %	19 242	2,7 %
	B Agricultural and food industry products	39 678	23,0 %	157 438	21,8 %
	C1 Clothing, leather	*4 756*	*2,8 %*	*2 204*	*0,3 %*
	C2 Printed or reproduced publishing products	*1 125*	*0,7 %*	*832*	*0,1 %*
	C3 Pharmaceuticals, perfumery, cleaning	*11 547*	*6,7 %*	*7 156*	*1,0 %*
	C4 Household equipment industries	*9 363*	*5,4 %*	*10 023*	*1,4 %*
	C Consumer goods Total	26 791	15,5 %	20 216	2,8 %
	D Automotive products	14 111	8,2 %	11 969	1,7 %
COMPANIES	*E1 Shipbuilding, aeronautics and railways*	*8 856*	*5,1 %*	*2 529*	*0,4 %*
	E2 Mechanical equipment industries	*12 705*	*7,4 %*	*8 970*	*1,2 %*
	E3 Electrical and electronic equipment industries	*12 021*	*7,0 %*	*1 723*	*0,2 %*
	E Capital goods Total	33 582	19,4 %	13 222	1,8 %
	F1 Mineral products industries	*3 847*	*2,2 %*	*100 695*	*14,0 %*
	F2 Textile industry	*2 252*	*1,3 %*	*2 935*	*0,4 %*
	F3 Wood and paper industry	*5 908*	*3,4 %*	*36 488*	*5,1 %*
	F4 Chemicals, rubber, plastics	*11 746*	*6,8 %*	*28 189*	*3,9 %*
	F5 Metallurgy and metal processing	*7 541*	*4,4 %*	*29 337*	*4,1 %*
	F6 Electrical and electronic components industry	*5 439*	*3,1 %*	*4 485*	*0,6 %*
	F Intermediate goods Total	36 732	21,3 %	202 130	28,0 %
MIXED	G Energy products	18 121	10,5 %	296 946	41,2 %
	TOTAL	**172 771**		**721 162**	

Source: ISPF data

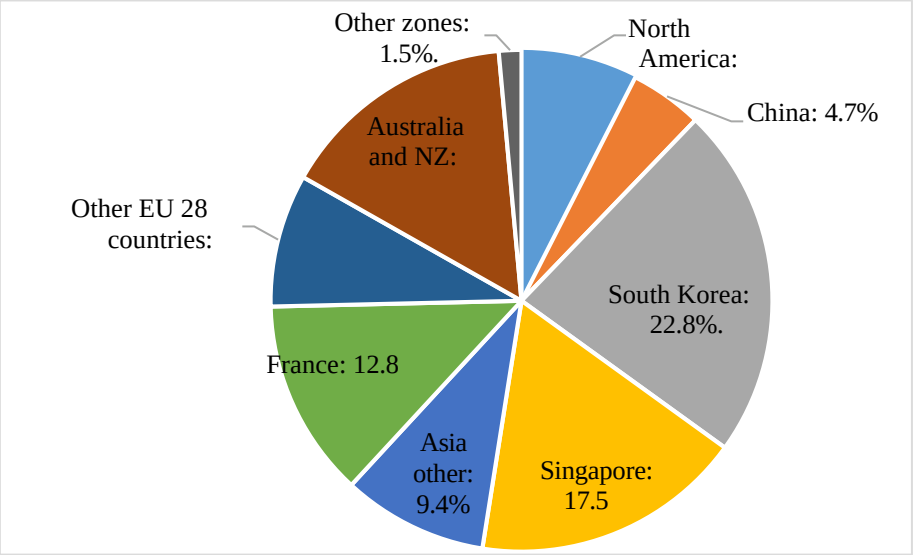
[16] In addition to transport costs, this remoteness can also have an impact on the purchase price of goods with a limited shelf life. Indeed, some manufacturers adapt their production methods to extend the use-by dates of certain food products destined for French Polynesia, making them more expensive than those destined for mainland France.

[17] ISPF, *Points forts* n° 02, "Bilan du commerce extérieur 2017", January 2019.

b) Mainland France, our main trading partner, especially for food industry products

40. *In terms of volume*, the main countries of origin of products imported by French Polynesia in 2017 were South Korea and Singapore, ahead of France, Australia and New Zealand. However, the bulk of products originating from Singapore (82%) and South Korea (77%) are hydrocarbons ("energy products").

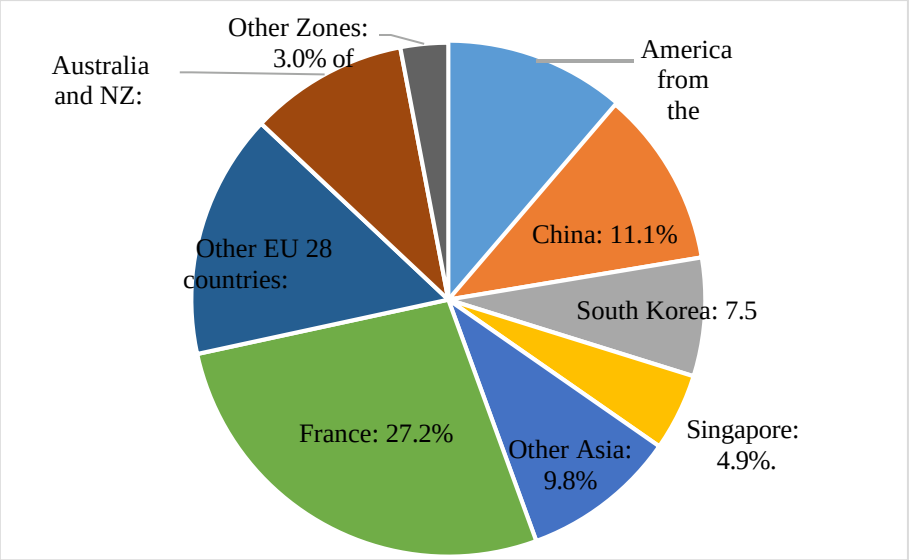
Figure 8: Geographical breakdown of 2017 imports by volume



Source: ISPF data

41. *In terms of value*, in 2017, the leading country of origin for imported products was mainland France, ahead of China and the United States.

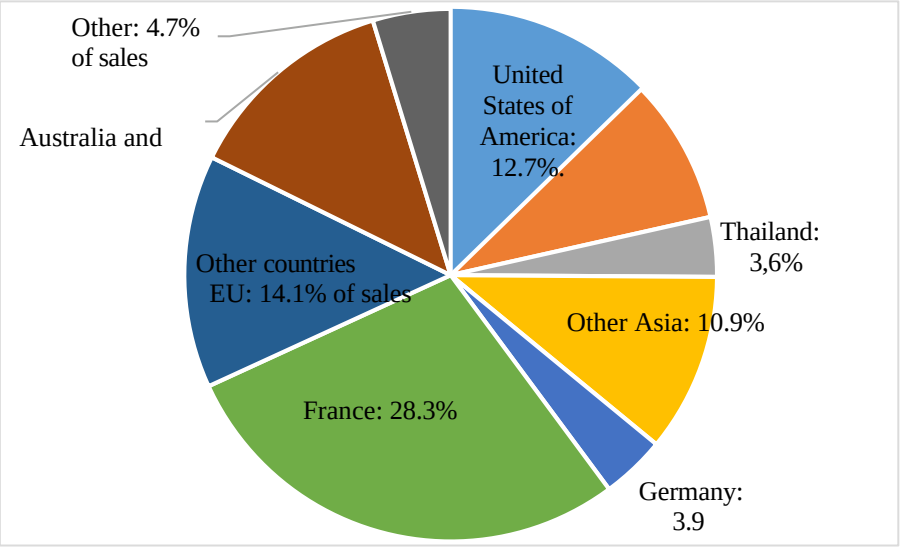
Figure 9: Geographical breakdown of 2017 imports by value



Source: ISPF data

42. France's position is even stronger if we consider only imports of products intended for households (consumer goods, agricultural and food industry products, vehicles). France accounts for 28% of imports by value and the European Union as a whole for 46%, followed by the United States, China, Australia and New Zealand.

Figure 10: Geographical breakdown of 2017 imports of products for households by value



Source: ISPF data

43. Product family by product family, the breakdown of imports varies considerably from one trading partner to another. To take a few examples of consumer goods, in CIF value terms :

- Agricultural and fishing products (unprocessed products, 3.8 billion F CFP), 46% come from the United States and 36% from Australia and New Zealand. The emphasis is therefore on proximity.
- Food industry products (39.7 billion F CFP) are sourced 32% from mainland France, 24% from Australia and New Zealand, 15% from the United States and 15% from other European Union countries. Of these, beverages (3 billion F CFP) account for 70% from mainland France and 16% from other European Union countries.
- Clothing and leather goods (4.8 billion F CFP) are sourced 41% from China, 24% from other Asian countries and 17% from the United States.
- Pharmaceutical, perfumery and household goods (11.6 billion F CFP) are 49% sourced from mainland France and 32% from other European Union countries.
- 42% of household goods (9.4 billion F CFP) come from China, 16% from mainland France, 14% from other European Union countries and 7% from the United States.
- Products from the automotive industry (14.1 billion F CFP) come 48% from the European Union (including 20% from mainland France, 10% from Germany, 4% from Italy and 4% from Romania) and 45% from Asian countries (in descending order: South Korea, Thailand, Japan and China).
- When it comes to telephones, computers and IT equipment (whether for households or businesses), China supplies 60% of cell phones and 86% of laptops on the Polynesian market.

44. So, despite the distance, most of the products covered by this opinion come from mainland France and, to a lesser extent, other European Union countries, particularly food industry products. It was French Polynesia's leading trading partner in 2017, in terms of both volume (excluding hydrocarbons) and value. It accounts for more than a quarter of the territory's foreign purchases, nearly a third of food products and 70% of beverages.

45. *In terms of volume*, more than half of our imports from mainland France are food industry products (37% food and 14% beverages). The remainder is mainly made up of intermediate products, destined for businesses rather than households (37%). These include chemical and metal products. Other consumer goods account for only a limited share of France's imports.

46. *In terms of value*, the agri-food industries remain dominant (27%). Milk, dairy products, beverages, cereal-based preparations, as well as flours and pastries, make up half of the food products imported from mainland France. The remainder comes from consumer goods (including pharmaceuticals), capital goods (including shipbuilding) and intermediate goods, notably chemical products (plastics materials and articles) and electrical machinery, appliances and equipment.

Table 7: Main imports from France (2017)

	CAF value	Volume
A - Agricultural, forestry and fish products	0 %	0 %
B - Products of the agricultural and food industries	27 %	51 %
C - Consumer goods Total	18 %	5 %
C1 - Clothing, leather.	*1 %*	*0 %*
C2 - Printed or reproduced publishing products.	*2 %*	*1 %*
C3 - Pharmacy, perfumery, maintenance.	*12 %*	*3 %*
C4 - Household equipment industries.	*3 %*	*1 %*
D - Automotive products	6 %	2 %
E - Capital goods Total	23 %	4 %
E1 - Shipbuilding, aeronautics and railways.	*10 %*	*1 %*
E2 - Mechanical equipment industries.	*7 %*	*3 %*
E3 - Electrical and electronic equipment industries.	*6 %*	*1 %*
F - Intermediate goods Total	26 %	37 %
F1 - Mineral products industries.	*2 %*	*7 %*
F2 - Textile industry.	*1 %*	*0 %*
F3 - Wood and paper industry.	*3 %*	*4 %*
F4 - Chemicals, rubber, plastics.	*9 %*	*12 %*
F5 - Metallurgy and metal processing.	*6 %*	*11 %*
F6 - Electrical and electronic components industries.	*5 %*	*2 %*
G - Energy products	0 %	1 %

Source: ISPF data

c) Reasons for the preponderance of mainland France in Polynesian imports

47. Empirical work on bilateral trade flows helps us to understand this polarization of imports from French Polynesia to a very distant mainland. Indeed, while the geographical distance between two territories tends to reduce their trade flows, economic, cultural and political proximity increases them significantly. In the case of French Polynesia, the sharing of a common language, combined with the consumption habits of the inhabitants of French Polynesia and the remoteness of other sources of supply, explains, at least in part, the significant weight of mainland France in French Polynesia's imports.[18] In concrete terms, consumers, some of whom come from mainland France, are subject to a strong cultural influence, visible for example in television advertising. In addition, supermarket chains and, consequently, private label products are also French.

48. This dominant position is reinforced by a number of regulations. The country has enacted a number of labelling regulations[19] which require pre-packaged foodstuffs to be labeled in French

[18] See in particular "Remoteness, insularity and competitiveness in small overseas economies", B. Poirine, *Agence Française de Développement Working Paper*, No. 52, November 2007.
[19] Deliberation no. 98-189 APF of November 19, 1998.

with a certain number of details (ingredients, quantities, use-by dates). A number of importers have told the Authority that this labelling requirement has resulted in significant additional costs for them. Indeed, suppliers, particularly in North America, often refuse to provide such labelling for such a small market.[20] In this case, the importer has to pay for the labeling, by printing and affixing labels to the packaging. These additional costs generate additional costs, particularly in terms of personnel, and lead importers to forego certain supplies which would enable them to make substantial savings on transport, particularly for fresh produce from the Asia-Pacific region.

49. In the case of food products, manufactured goods and building materials, European standards aim to reassure consumers about the quality of the product they are buying.

50. The more favorable customs regime also encourages the purchase and distribution of products originating in the European Union (see § 127 et seq.).

3. TRANSPORT, AN IMPORTANT BUT NOT EXCLUSIVE SOURCE OF ADDITIONAL COSTS

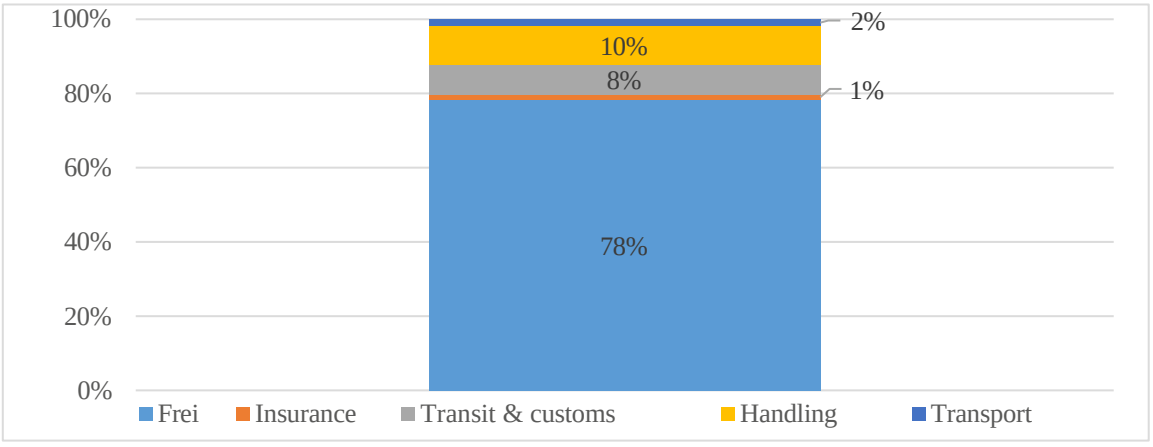
51. The high volume of imports, combined with the region's isolation, means that transportation plays a key role in price formation. Approach costs include all transport to the consignee's warehouses, i.e. freight and insurance, as well as arrival services (transit, customs clearance, handling and transport).

52. According to an ISPF study,[21] in 2015, 99% of the volume of goods (700,000 tonnes representing a value of around 140 billion F CFP) was imported by ship. Air freight (3,000 tonnes and 29 billion F CFP) only concerns perishable goods (fruit and vegetables) and/or high value-added goods (pharmaceutical products).

a) Freight: main cost item, followed by handling

53. Of the approach costs, sea freight is the most important (nearly 80%), followed by handling (10%) and transit (8%), often fixed at a flat rate as a proportion of the CIF price (2-3% of the CIF price).

Figure 11: Structure of approach and transport costs



Source : APC

54. In addition to these costs, there are specific charges linked to the multiplication of load breaks and systematic handling between the different stages of transport, *especially* when delivering to

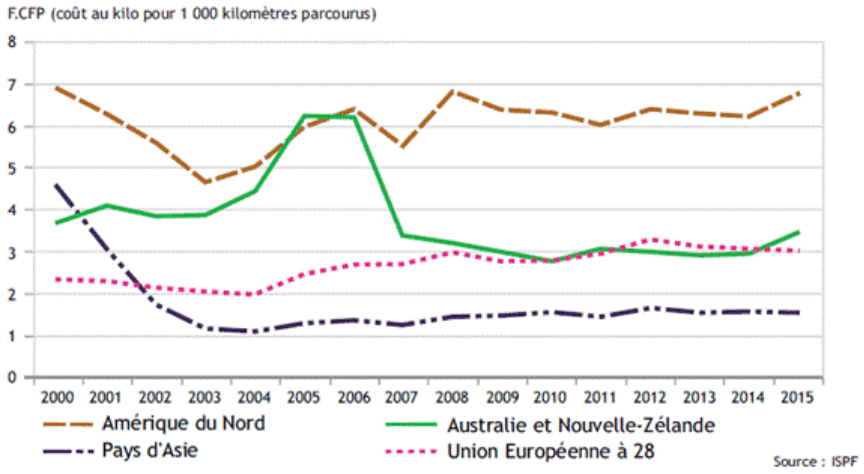
[20] For example, we cited the example of tomato paste in 225g cans (a PPN), for which an American supplier could offer attractive prices, but refuses to take charge of labeling for volumes of less than several million cans, which is inaccessible to the Polynesian market.
[21] ISPF, "International freight in French Polynesia from 200 to 2015", *Highlights*, No. 06, September 2017.

the Polynesian islands. Indeed, these different stages multiply the risk of breakage, particularly for certain products such as beverages. According to some importers, the extra cost can be significant.

b) Freight costs depend on the origin and nature of the goods transported

55. According to the ISPF, the average cost of sea freight was 30 F CFP per kilo in 2015, compared with 754 F CFP for air freight. More than the distance involved, the cost depends on the frequency of connections, currency and oil prices, and the type of products involved. Thus, per kilometer, imports from Asia are the least expensive, while those from the United States are the most expensive.

Figure 12: Ocean freight costs by geographic origin



56. The public cost of transport from mainland France on the main line, excluding handling and taxes, amounts to just over 400,000 F CFP for a 20-foot dry container and 600,000 F CFP for a 20-foot refrigerated container. Excluding fuel, after several years of stability, it increased by 3.3% in 2018.

Table 8: CMA-CGM public fares on the Le-Havre-Papeete route (excluding stevedoring at destination)

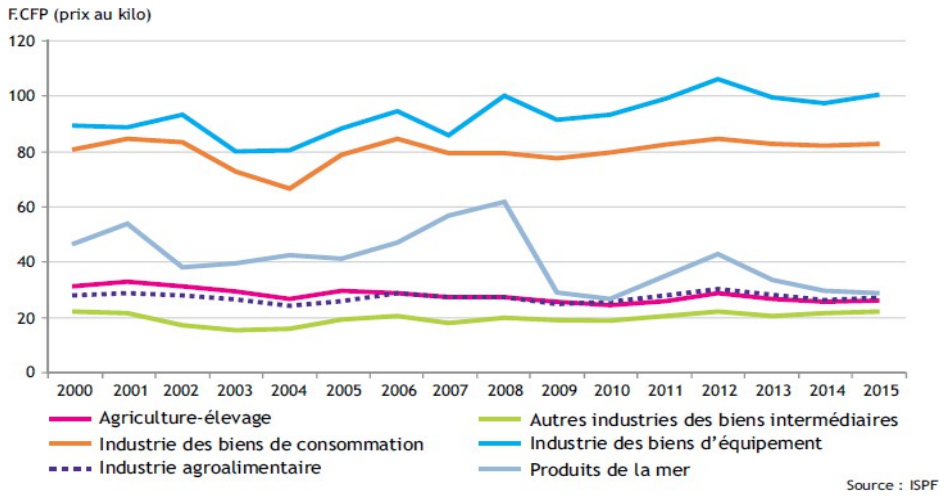
	2014	2015	2016	2017	2018	*2018/2017 trend (Papeete)*
20 ft. dry						
Freight	232 697	232 697	232 697	232 697	240 453	*3,3%*
Fuel adjustment	131 384	115 274	109 547	114 558	124 940	*9,1%*
Other	52 625	64 916	65 394	64 558	59 189	*-8,3%*
Total	**416 706**	**412 888**	**407 637**	**411 814**	**424 582**	***3,1%***
20 feet refrigerated						
Freight	417 661	417 661	417 661	417 661	425 418	*1,9%*
Fuel adjustment	151 074	132 578	126 014	131 742	143 675	*9,1%*
Other	59 069	75 179	75 656	75 060	69 570	*-7,3%*
Total	**627 804**	**625 417**	**619 332**	**624 463**	**638 663**	***2,3%***
40 ft. dry						
Freight	465 394	465 394	465 394	465 394	480 907	*3,3%*
Fuel adjustment	262 768	230 549	219 093	229 117	249 881	*9,1%*
Other	77 566	101 790	102 745	101 074	90 095	*-10,9%*
Total	**805 728**	**797 732**	**787 231**	**795 584**	**820 883**	***3,2%***
40 feet refrigerated						
Freight	835 322	835 322	835 322	835 322	850 835	*1,9%*
Fuel adjustment	302 148	265 155	252 029	263 484	287 351	*9,1%*
Other	84 129	112 052	112 888	111 575	100 477	*-9,9%*
Total	**1 221 599**	**1 212 529**	**1 200 238**	**1 210 381**	**1 238 663**	***2,3%***

Source: CMA-CGM data

57. However, the tariffs actually paid by importers are often lower than public tariffs. According to various data collected from importers, shipping agents and companies, they would amount to around 300 to 360,000 F CFP for a 20-foot non-refrigerated container. Rates are said to have risen sharply again in early 2019.

58. Transport costs for intermediate goods (20 F CFP per kilo) and food products (30 F CFP per kilo) are relatively low. Transport costs for consumer goods (80 F CFP per kilo) and capital goods (92 F CFP per kilo) are higher.

Figure 13: Sea freight costs by product

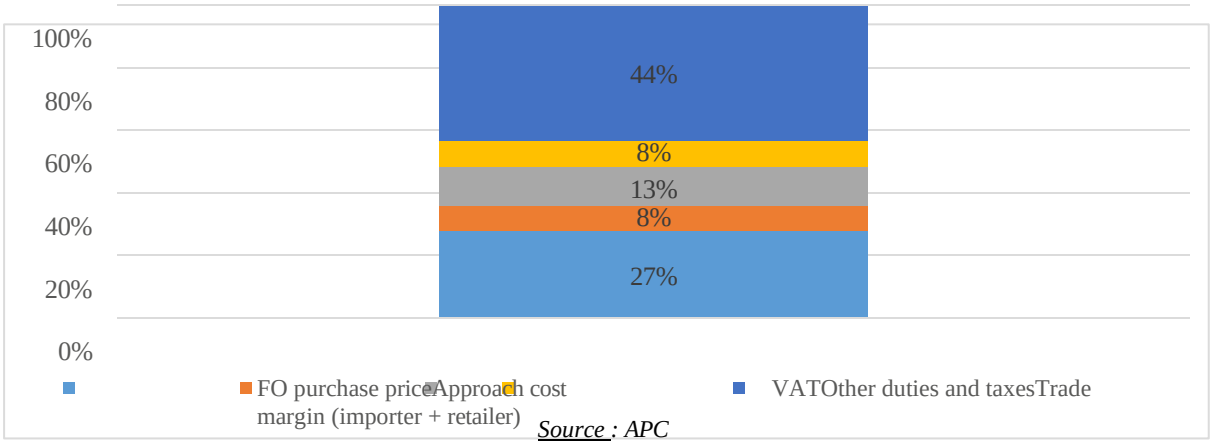


c) Approach costs: a significant but not exclusive source of additional costs

59. The players heard by the Authority generally agree that the transport of goods represents around 10% of the *final* sales price, excluding tax.

60. These orders of magnitude are confirmed by a more detailed analysis of price breakdowns. Based on data obtained by the Authority during the course of the investigation, an analysis was carried out for various product categories (food products, household goods, DIY items, car parts, building materials). On average, the approach cost, which includes freight but also handling of goods and on-site transport, represents around 8% of the price (including VAT) of a product in the sample (i.e. 9% of its price excluding VAT). This represents a corresponding increase in the price of imported goods.

Figure 14: Breakdown of consumer prices for everyday consumer products



Source : APC

61. However, transport costs vary from product to product. It is proportionally higher for bulky, heavy goods of low unit value, such as certain foodstuffs or building materials. On the other hand, it is lower for high value-added products, *especially those of* low volume. For example, approach costs represent 35% of the sales price of cement (including 22% for freight alone), 31% of that of flour (including 23% for freight alone), or 12% of that of car parts (including 11% for freight alone). Logistical costs account for a significant proportion of importers' purchase prices, around 20% for some products (such as flour or cement), and as much as 40 or 50% for others. The so-called "Tefaarere" report,[22] citing a contribution from the Fédération Générale du Commerce (FGC), indicated that freight accounted for 70% of the purchase cost of a packet of rusks, but 10% of that of a television set.

62. This value is representative of the additional costs incurred by importers due to their remoteness. It is significant, but in the case of imported goods, insufficient on its own to explain price differences with mainland France or the French overseas departments and territories (which are also subject to high transport costs).

4. ACCESS TO LAND: A HIGH BARRIER TO ENTRY

63. The production, import and distribution of everyday consumer goods require large amounts of space: production sites, refrigerated and non-refrigerated warehouses, sales areas. This is even more true in isolated areas. Given the remoteness and infrequency of deliveries, importers and distributors face specific storage constraints. Either they protect themselves against the risk of

[22] Assemblée de la Polynésie française, *Rapport présenté au nom de la commission d'enquête chargée de proposer des mesures d'encadrement des marges et des prix des produits commercialisés et des mesures de contrôle et de répression en cas d'infraction*, rapporteur Hirohiti Tefaarere, February 26, 2009, page 103.

stock-outs by building up reserves and "overstocking" certain products (resulting in high storage costs), or they limit storage costs by working on a just-in-time basis, but run the risk of stock-outs and higher purchase prices (due to lower order volumes).

64. Moreover, for importers, proximity to the port is necessarily an advantage, while for retailers, strategic locations are rare and must include not only sales, storage and administrative areas, but also significant parking space, given the scarcity of public transport.

65. However, in French Polynesia, particularly in Tahiti and the Windward Islands, the main markets, land is scarce and expensive due to severe geographical constraints, with most of the population living along the ring road around the island of Tahiti. The cost of land therefore weighs heavily on business expenses, in the form of rent or fixed asset depreciation, and consequently on prices. While it is difficult to control the part of these costs that is due to "natural" scarcity, unless prices are administered, it is important to ensure that the behavior of players does not exacerbate this scarcity and lead to "artificial" barriers to entry. The cost of land is particularly penalizing for new entrants, who do not have access to "historical" land and see it as an obstacle to their development, but also for dispersed players, who could more easily group together, either to sell their production (manufacturers) or to make joint purchases (retailers), if they had access to common land at affordable prices.

66. During the course of the investigation, the Authority was made aware of a number of land retention practices. In a context of scarcity linked to strong geographical constraints, the freezing of land compromises the possibility for companies to emerge or develop their competing commercial or industrial activities. Such practices, if proven, present a potential risk, as the metropolitan competition authority has pointed out: *"the risk of abuse of a dominant position that could result from a strategy of pre-emption of areas eligible for the establishment of commercial facilities on the part of the major chains falls within the scope of the control exercised under article L. 420-2 of the French Commercial Code, which sanctions abuses of a dominant position".*[23]

67. The problem of undivided ownership of land, which is very prevalent in French Polynesia, adds a further difficulty to the acquisition of land for the development of economic activities.

B. REGULATORY FACTORS

68. While geographical factors are a natural handicap for prices, they are not in themselves sufficient to explain their level. Other factors must be taken into account to explain these additional costs.

69. French Polynesia has instituted artificial barriers to entry. These include tariff protection (customs duties, import taxes), non-tariff protection (quotas and import bans) and foreign investment controls, all of which act as barriers to access to the Polynesian market. Although theoretically designed to protect local production, many of these regulations make imported products more expensive and reduce competition in domestic markets.

70. If we look at tariff barriers alone, on average, import taxes and duties represent the same proportion of the selling price to the consumer as approach costs (around 8% of the price) and less than VAT (13%).

[23] Opinion by the Conseil de la concurrence n° 07-A-12 of 11 October 2007

1. IMPORT TARIFF BARRIERS

71. French Polynesia enjoys fiscal autonomy, by virtue of its autonomous status within the French Republic.[24] The Customs Department is responsible for collecting import duties and taxes (hereinafter referred to as "DTI"). It is a government department made available to French Polynesia under a 1985 agreement. It carries out tasks on behalf of the State and on behalf of French Polynesia, in particular the liquidation of duties on entering and leaving the territory, and the application of foreign trade regulations.

72. The argument put forward to justify protectionist practices in French Polynesia is to support domestic industry. This is an old argument, originating with the economist Friedrich List[25] and can be summed up by the concept of educational protectionism: to enable local companies to gain a foothold in their market, the country's government erects trade protections to help them temporarily, until they are productive enough to face international competition. This argument is relevant in small, isolated economies where, in the absence of a large market, local companies may find it difficult to finance substantial investments in their first years of operation.

73. In French Polynesia, this argument found a particular echo, leading to the introduction on January 1er 1998 of the local development tax (hereafter "TDL") to replace the lowering of customs duties. However, contrary to the original intention, these temporary protection measures have become permanent, encouraging the substitution of local production for imports, even for mature companies or sectors that have already established themselves on a long-term basis.

a) Overview of import duties and taxes: a complex tangle and a high level of taxation

i) A complex system

74. Numerous import taxes apply specifically to products entering Polynesia, in addition to the indirect taxes already applicable to all products, such as value-added tax and domestic consumption duties.

75. These include customs duties, which are reduced for products from the European Union, as well as various taxes, including the TDL, which is levied specifically on imported products that compete with local products. Certain exemptions are provided for, notably for essential products, which are totally exempt from import taxes.

[24] Article 74 of the French Constitution; Organic Law no. 2004-192 of February 27, 2004.
[25] F. List, *National System of Political Economy*, 1841.

Table 9: Overview of duties and taxes applicable to imported products

Wording	Rates[26]
Customs duty	Up to 10% of CIF value if EU origin Up to 15% of CIF value if non-EU origin Generally low rates for food products excluding sweets and alcoholic beverages (0-6%)
Import VAT	0%, 5% or 16% (CAF value + duties and taxes excluding TDL +landing fees)
Consumption tax on hydrocarbons	12 F CFP, 21 F CFP or 39 F CFP/litre
Equalization tax on hydrocarbons	1.10 F CFP; 12 F CFP; 6 F CFP or 10.50 F CFP/litre
Specific exceptional tax on hydrocarbons	7 F CFP/liter diesel
Internal consumption tax on products petroleum products (TIPP)	20% cash flow value
Solidarity tax for the elderly and the disabled	4 F CFP/litre of fuel 10 F CFP/liter of gas
Special consumption tax	4 or 12 F CFP per liter of petrol or diesel 325 F CFP per liter of alcohol 2,000 F CFP per 1,000 cigarillos
Statistics tax	50 F CFP/metric ton 50 F CFP/100 kg 10F CFP/kg on certain products
Specific consumption duty on other imported products	35 F CFP/liter (beer) 3,680 F CFP, 4025F CFP or 5,000 F CFP/liter of pure alcohol
Consumer duty on other ad valorem	Variable (% CAF +DD value)
Ad valorem tobacco consumption duty	Variable (% CAF value x coefficient)
Specific tobacco consumption duty	8,000 F CFP, 12,300 F CFP or 23,300F CFP/thousand units
Additional solidarity tax	Specific: CFP 2,000/1,000 units on cigarettes Ad valorem: 10% CAF value +DD on strong spirits
Tobacco and alcohol compensation tax imported	20% cif value alcohols 60% CIF value tobacco
Royalty for the use of the freight station at Tahiti Faa'a airport	4.899 F CFP/kg with minimum collection of 45 F CFP
Papeete port toll tax	1.25% cash flow value

[26] CIF value = Cost-Insurance-Freight value of goods, i.e. the value of goods, including transport c o s t s .

Wording	Rates[26]
Local development tax (TDL)	2%; 9%; 20%; 27%; 37%; 51%; 60% or 82%. CAF +DD value
Customs IT participation	85 F CFP/article declared
Specific tax on major works and roads	On imported vehicles: 8%; 10% or 18% CIF value
Tax for the environment, agriculture and fisheries	2% cash flow value
Tax on imported electrical equipment	1% cash flow value
Flat-rate solidarity tax on large hotel and tourism investments	2% cash flow value
Flat-rate express freight tax	20% c.i.f. value for shipments originating in the European Union, above the 20,000 F CFP allowance 30% CIF value for original shipments extra-Community, above the 20,000 F CFP allowance
Postal tax	20% c.i.f. value for EU postal items over the 20,000 F CFP allowance 30% c.i.f. value for non-EU postal items over the 20,000 F CFP allowance 20,000 F CFP

Source: Customs Code, articles 190 to 196, and various regulatory texts

76. The main duties and taxes affecting products on import are customs duties, import VAT, taxes on hydrocarbons, the port toll tax, the TDL, as well as numerous specific taxes on protected goods[27] (tobacco, alcohol). Most of these duties and taxes apply to both imported products and local production, but the rates or lump sums applicable are often higher for imported products.

77. This complexity is compounded by customs exemption schemes in support of local industry. For example, a 2015 report by the territorial audit chamber highlighted the importance of customs exemption schemes in the policy to support local industry: "*The market for Polynesian companies is protected by entry barriers made very powerful by a developed system of taxation on imported products and zero-rating of inputs. (...) / Customs tax exemptions have always been a key area of support for importing companies, to the extent that there are 120 cases of exemption in the Polynesian system (...) / Excluding customs exemptions for basic necessities (PPN), these exemptions amounted to 9.4 billion F CFP in 2013. This type of intervention is growing significantly: a 30% increase in 4 years, and an increase of 1 billion in 2013 alone (...) / The most significant exemptions concern the aeronautics sector, alcoholic beverages consumed in hotels and restaurants, mineral water and cruise ships*".[28]

ii) Large sums

78. These taxes add significantly to the price of imported products, weighing on consumers' purchasing power. According to import data available on the ISPF website, import duties and taxes levied by the customs service have represented around 51 billion F CFP in 2017 for a value of imported goods of 172.7 billion F CFP, i.e. an average tax rate of 29.5%.

79. This rate has been relatively stable since 2000[29] ranging from 26.1% to 32.5% of imports, compared with over 40% in the 1990s. By way of comparison, it stood at around 15% in New Caledonia in 2012.[30]

[27] Goods over whose consumption the country wishes to exercise control.

[28] Chambre territoriale des comptes de la Polynésie française, *Collectivité de la Polynésie française, Interventionnisme économique et aide aux entreprises - Exercices 2004 et suivants*, April 2015.

[29] This is the date of implementation of the customs reform.

[30] "Rapport relatif aux mécanismes d'importation et de distribution des produits de grande consommation en Nouvelle-Calédonie", ADLC,

Figure 15: Weight of taxes in imports



Source: ISPF data

80. Of these various taxes, VAT is the one with the highest yield. However, it is not specific to imports, and as such has no incentive or dissuasive effect on the use of imported products.

81. Customs duties are relatively high, but not exceptional. They represent around 3.8% of total imports (6.63 billion F CFP for total imports of 172 billion F CFP) and are in line with the world average (4%). While this rate is higher than that of major wealthy countries such as mainland France (1.6%), Japan (2.4%) or the United States (2.7%), it is well below the level of other island economies such as the Bahamas (28.1%), Dominica (11.2%), Fiji (11.8%) or Samoa (11.8%).

82. French Polynesia, on the other hand, is distinguished by the existence of a myriad of additional taxes which, while not formally customs duties, do constitute tariff protection measures, play the same role and can therefore be assimilated to them. When these are included, we find very high levels of tariff protection, around 30%, comparable to those of the Bahamas.

83. This is a major source of revenue for the country, accounting for around 40% of its tax revenues, thanks in particular to VAT on imports, customs duties and the numerous taxes on hydrocarbons.

September 21, 2012.

Table 10: The country's main tax products on imported goods (amounts realized 2017)

Taxes paid to the country's general budget		2017 tax revenue	ITD shares
7111	Import VAT	20 570 947 936	48,2 %
71261	Customs duties	6 631 182 439	15,5 %
71211	Consumption tax on hydrocarbons	3 627 114 266	8,5 %
71262	Tax for the environment, agriculture and fisheries	2 712 757 500	6,4 %
71281	Local development tax	1 838 772 926	4,3 %
7321	Vehicle registration tax	1 363 938 565	3,2 %
71283	Special consumption tax	1 283 864 288	3,0 %
71381	Consumption tax/imported tobacco and alcohol	1 223 173 016	2,9 %
71213	Exceptional specific tax on certain fuels	1 050 893 984	2,5 %
71251	Specific tax on major works and roads	666 591 277	1,6 %
71225	Tax for the Development of Sport and Youth	448 660 836	1,1 %
7181	Fines and forfeitures - Customs	264 923 793	0,6 %
71223	Specific tax on consumption of wine beverages	204 270 141	0,5 %
71212	Internal tax on petroleum products	185 654 439	0,4 %
71226	Special Consumption Duty on Beer	179 472 810	0,4 %
71263	Statistics tax	175 498 192	0,4 %
71271	Postal flat-rate tax	78 809 127	0,2 %
763	Interest on customs drafts	76 687 336	0,2 %
71272	Passenger flat-rate tax	53 266 847	0,1 %
71224	Consumption tax/other alcoholic beverages	43 444 595	0,1 %
71221	Additional ad valorem solidarity tax	22 955 831	0,1 %
Total Import duties and taxes (excluding exemptions)		**42 702 880 144**	**100 %**
Other taxes		**62 549 983 107**	
Total taxation		**105 252 863 251**	
Import-related revenues as a percentage of the country's total tax revenues		**41 %**	

Source: Balance of accounts, French Polynesia, 2017

84. In addition to these tax revenues, which contribute to the country's general budget, the Customs Department collects a range of taxes and fees on imports for the benefit of public or semi-public institutions.[31] amounting to around F CFP 10 billion. These taxes include the toll tax for the port of Papeete, specific import consumption duties, the solidarity tax on alcohol and tobacco (TSAT) and the equalization tax on hydrocarbons (TPH). The result is an import tax of 51 billion F CFP.

iii) Import duties and taxes penalize certain products that compete with local products.

85. However, average tax rates on everyday consumer goods, particularly food products, vary.

86. They are relatively low for a number of basic food products, probably because the share of duty-free PPN is high (between 7 and 14% excluding beverages and tobacco). On the other hand, they are very high for certain products, particularly beverages. For example, they represent 210% of CIF value for beer, and 182% for wine, 350% for whisky, but also 34% for fruit juices, 52% to 111% for sweet drinks and 11% for mineral waters.

[31] These include the Caisse de prévoyance sociale (CPS), the autonomous port, the airport concession holder (ADT) and the Groupement interprofessionnel du Monoï de Tahiti, as well as the Fonds pour l'emploi et la lutte contre la pauvreté (FELP).

Table 11: Import duties and taxes as a proportion of the CIF value of imported products

	2017		
	CAF value	**DTI**	***ITD share***
A Agricultural, forestry and fish products	3 755 205 408	503 295 828	***13%***
B Agricultural and food industry products.	39 678 369 969	14 024 984 910	***35%***
B01 Meat, skins and meat products	*10 912 208 607*	*768 089 450*	***7%***
B02 Dairy products and ice cream	*4 832 145 373*	*437 182 693*	***9%***
B03 Beverages	*3 007 529 149*	*3 569 362 609*	***119%***
B04 Processed cereals and animal feed	*4 317 332 938*	*449 053 686*	***10%***
B05 Miscellaneous food industry products	*16 052 609 202*	*2 308 928 256*	***14%***
B06 Manufactured tobacco	*556 544 700*	*6 492 368 216*	***1167%***
C Consumer goods	26 790 780 794	5 825 708 528	***22%***
C1 Clothing, leather	*4 755 883 904*	*1 109 725 322*	***23%***
C2 Printed or reproduced publishing products	*1 124 703 393*	*198 301 570*	***18%***
C3 Pharmaceuticals, perfumery, cleaning	*11 547 403 379*	*1 573 740 702*	***14%***
C4 Household equipment industries	*9 362 790 118*	*2 943 940 934*	***31%***
D Automotive products	14 111 161 812	4 674 541 686	***33%***
E Capital goods	33 581 904 124	7 131 787 858	***21%***
F Intermediate goods	36 732 394 470	10 059 552 420	***27%***
G Energy products	18 120 854 418	8 738 587 297	***48%***
Grand Total	**172 770 670 995**	**50 958 458 527**	***29%***

Source: ISPF data

Table 12: DTI on the 10 most imported beverages in 2017 (91% of beverage imports)

	CAF value	DTI	***ITD share***
Wine from fresh grapes	871 227 253	1 589 365 417	**182%**
Natural mineral waters	429 658 337	48 730 759	**11%**
Non-alcoholic beverages containing fruit juice	348 831 454	119 283 349	**34%**
Champagne	267 047 606	268 315 743	**100%**
Unroasted malt	208 839 584	19 896 062	**10%**
Water with added sugar or flavoring	208 192 935	231 127 473	**111%**
Malt beers	110 458 341	232 213 242	**210%**
Non-alcoholic beverages, not containing fruit juice	109 380 077	56 493 878	**52%**
Carbonated mineral water	87 973 097	9 968 717	**11%**
Whiskies	86 127 801	302 341 011	**351%**

Source: ISPF data

87. As a result, from the moment they enter the country, consumers are faced with a combination of health policy imperatives (reducing consumption of sugary and alcoholic beverages) and protectionist policies aimed at protecting local production (in the case of beer and fruit juice, for example).

88. This can be seen in the low tax levels applied to certain inputs for local production, including sweetened and alcoholic beverages, in addition to the exemptions already applied to raw material imports. For example, malt, whether roasted or not, used to make locally-produced beer is taxed at a very low rate (10%). The same applies to fruit concentrates, including pineapple, which are taxed at an average of between 11% and 13% and are used to make local fruit juices, whereas both raw fruit and manufactured juices are, for the most part, banned from importation.

iv) The local development tax: a low yield, but a dissuasive role

89. The TDL was introduced on January 1er 1998 as part of a major overhaul of the Polynesian tax system. The introduction of VAT (domestic and on imports) on the same date led to the disappearance of a number of customs taxes, such as the new social protection tax (TNPS) and the entry tax (DFE), which gave a relative advantage to imported products.[32] In deliberation no. 97-24 APF of February 11, 1997, the Assembly of French Polynesia therefore introduced a protection mechanism designed to preserve the competitive gap between local and imported products before the disappearance of a significant proportion of customs protection: "*Art. 11.- As of October 1er 1997, a local development tax (T.D.L.) is instituted to protect local processing industries, to be liquidated by the customs service. The base, rates and procedures for liquidation and collection will be defined by deliberation of the Assembly of French Polynesia no later than 2 months before its implementation*". Deliberation no. 97-194 APF of October 24, 1997 defined the products subject to the fee. The TDL was introduced gradually, as customs barriers were lowered. erOn January 1, 1998, the TDL rate was initially set at 1% of the CIF value of imported products, in response to the 5-point reduction in the TNPS rate. Its rate was raised to 2% of the CIF value on January 1er 1999, following the disappearance of the TNPS. From January 1er 2000, the dismantling by thirds of the DFE led to the introduction of higher TDL rates, differentiated by product.

90. *Ultimately,* however, the level of protection was reduced overall with the introduction of the TDL, even though its base was broadened to include customs duty in addition to the CIF value.

91. Today, the TDL concerns 147 "tariff headings" for products imported into French Polynesia, supposedly competing with local products, and its rates vary from 2% to 82% of the product's CIF value plus customs duty. These include everyday consumer goods as diverse as jams, soaps, fruit juices, mineral water, pareos, beer, tablecloths and napkins, and toilet paper.

92. A consultative commission for the local development tax, created by deliberation no. 2006-46 APF of July 31, 2006, and made up of representatives of the government, the Assembly, employers' organizations and consumers, examines and gives its opinion on files in which local manufacturers or importers submit requests for changes to the list or applicable rates. The final decision rests with the Assembly of French Polynesia, which has sole competence in tax matters.

93. According to data provided by the DGAE, in 2017 the TDL covered 3.7% of total imports (by value), for which the average tax rate was 28.4%, representing a yield of around 1.8 billion F CFP. The TDL's yield is therefore relatively low, but it is at the heart of the criticisms levelled by the various players we met during our investigation, given the distorting effects it produces, notably by discouraging the import of certain products, which contributes to its low yield.

b) Competitive analysis

94. Import restrictions have already been the subject of relatively recent reports and publications questioning their lack of economic efficiency. This is the case, for example, of the Bolliet report, submitted in 2010 by the French Polynesia assistance mission, the report by the French Polynesia Assembly on prices and margins, known as the "Bolliet report", and the report by the French Polynesia Assembly on prices and margins, known as the "Bolliet report". The "Tefaarere Report" of 2009 or the books and articles by Bernard Poirine.[33] These recurring criticisms

[32] One of the arguments behind the introduction of the TDL was the double loss to Polynesian industries that had previously been exempt from DFE on imported materials. With the tax reform, these industries lost the benefit of DFE protection on products, and the DFE exemption on intermediate consumption.

[33] Bernard Poirine and Jean-François Gay, "Le coût du protectionnisme dans une petite économie insulaire : le cas extrême de la Polynésie française", *Région et Développement*, 2015, 42, p. 133-156; B. Poirine, *Tahiti, une économie sous serre*, L'Harmattan, 2012.

emerged once again during the course of the investigation for this opinion. They were particularly strong with regard to quantitative restrictions on imports and the TDL, perceived as a purely protectionist tax.

95. What's more, the complexity and opacity of the system increase the asymmetry of information between distributors and consumers, to the detriment of the latter. Consumers find it difficult to navigate the complex architecture of this indirect tax system, and to determine how much of the selling price of the product they buy is attributable to taxation, and to what extent.

i) Tariff protection resulting in a loss of well-being for the economy as a whole

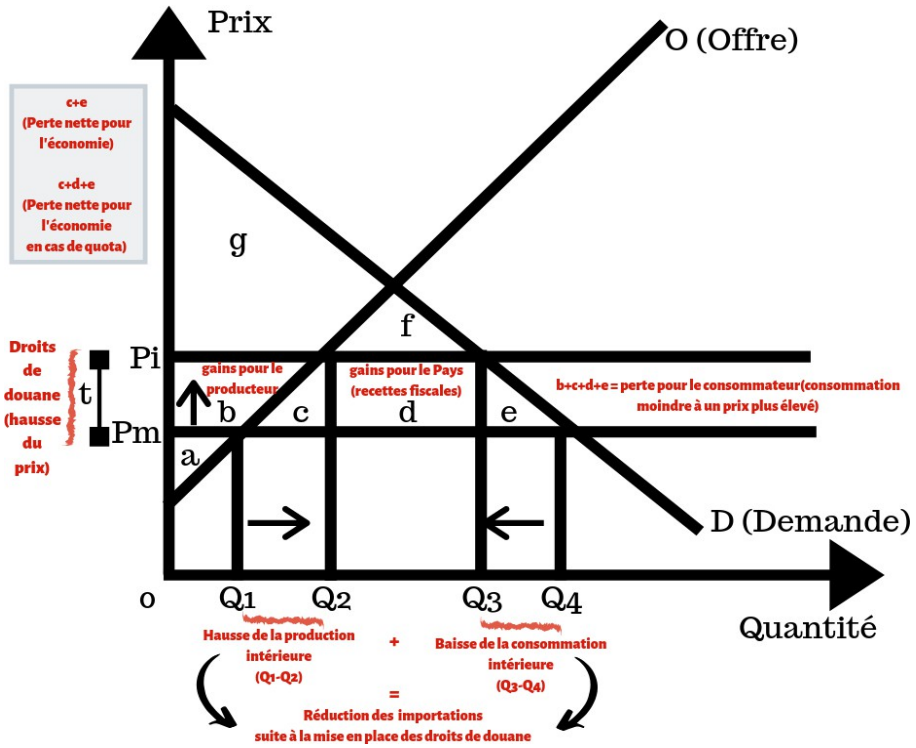
◆ *Economic analysis of the impact of customs duties*

96. The introduction of customs duties and import taxes increases the domestic price of the imported product. Where they exist, they protect local producers from foreign competition. This is generally the main objective of trade barriers, whether tariffs or non-tariff barriers.

97. If we leave aside the question of government redistribution of the tax revenue generated by tariffs, and adopt a more neutral hypothesis, namely that of category indifference on the overall effect[34] the net cost of tariff protection is as follows:

Net cost of tariff protection = Consumer loss - Producer gain - Tax revenue

98. This equation highlights the relative gains and losses associated with tariff protection, as shown in the graph below:



[34] This means that the gain or loss of one CFP franc by any of the groups (consumers, companies, countries) has the same effect on the overall well-being of the economy.

99. So, replacing by the geometric equivalents of the graph above :

Net cost of tariff protection = (b+ c + d + e) - b - d = c + e

100. Indeed, by raising the domestic price of imported products above the world price, tariff protection encourages consumers and producers to modify their behavior. Consumers reduce their consumption to the point where the last unit consumed brings them welfare equal to the domestic price, including import duties and taxes. In the end, they consume too little, creating a loss due to consumption distortion, equal to the triangle "*e"*. Symmetrically, producers increase production until marginal cost equals price, including tariff protection. They therefore produce too many units of the taxed good, whereas in the absence of tariff protection, the Polynesian economy could buy it more cheaply abroad. This results in a loss, linked to the distortion of production, which corresponds to triangle "*c"*.

101. In the case of a small country like French Polynesia, tariff protection therefore has a net cost equivalent to the "*c + e"* areas, which measure the induced loss of efficiency for the domestic economy. This is due to the distorted incentives to produce (triangle "*c"*) and consume (triangle "*e"*) generated by tariff protection.

102. These losses are indeed net welfare losses for the Polynesian economy, and are not offset by the tax revenues generated by tariff protection, or by any other mechanism linked to tariff barriers. Indeed, as a small country, tariff barriers introduced by French Polynesia are not capable of lowering the pre-tax price of imports. In fact, the drop in demand induced by tariff protection is so small on a global scale that it has no effect on world prices.

◆ *A high cost for the Polynesian economy*

103. In a 2015 article, two economists attempted to estimate the total cost of these various protectionist measures.[35] In their view, the cost to the consumer and to the community is high, amounting - assuming a unitary elasticity of import demand - to a net loss equivalent to 47% of the industry's value added, or 2.8 million F CFP per industry employee per year (or 84% of the industry's average wage). In their view, under the pretext of protecting local industry, these measures in fact amount to having industrial jobs financed by the consumer and the public authorities, with no certainty that these jobs would disappear in the event of a reduction or removal of these barriers. Indeed, the gains in purchasing power on imported products could in whole or in part be transferred to a demand for local goods and services, made more advantageous by the lower cost of imported intermediate consumption (even if many benefit from tax exemptions). As B. Poirine about the Polynesian consumer: "*the more he pays for imported Chinese, Japanese or Korean products, the less money he has left to buy local products, especially local services (restaurants, hotels, for example). / So, paradoxically, protectionism reduces the consumption of local products, by artificially raising the price of imported products, thus reducing the purchasing power of the F CFP in imported and local products*".[36] However, there is no economic need to over-protect small island economies. Some states, such as the Republic of Mauritius[37] a territory even more dependent on foreign trade than French Polynesia[38] have lower average tariff protection than the European Union, at 1.25% on

[35] Bernard Poirine and Jean-François Gay, "Le coût du protectionnisme dans une petite économie insulaire : le cas extrême de la Polynésie française", *Région et Développement*, 2015, 42, p. 133-156.
[36] B. Poirine, *Tahiti, une économie sous serre*, L'Harmattan, 2012.
[37] To a lesser extent, we can also mention the Republic of Seychelles.
[38] Mauritius's openness rate ([(Exports +Imports)/GDP] x 100) was 120.5% in 2013, compared with 32% for French Polynesia. Mauritius' coverage rate ([Exports/Imports] x 100) is also much higher than that of French Polynesia, which puts Mauritius' external dependence into perspective: 97% versus 8%. French Polynesia's coverage rate has been converging structurally towards a value of between 7% and 8% since 2008.

average.[39]

104. This observation calls for a fresh look at economic policy. Reducing the cost of imports, and therefore the cost of living in the country and of inputs (building materials for real estate projects, foodstuffs and hotel furnishings, etc.), would have a positive impact on the country's attractiveness, particularly in the tourism sector, and would undoubtedly prove more effective than the policy of tax exemption, which in reality offsets some of the costs incurred by protectionism for investments, but does not reduce the operating costs of tourist establishments or the cost of services for visitors.

◆ *A particularly strong effect on everyday consumer goods*

105. On the general price index, the effect of the TDL alone seems measured. A study commissioned by the Polynesian Ministry of Economy and Finance and carried out by Paul Roger de Villers in February 2009[40] concludes that the overall price effect is limited to less than 1%, but this is essentially due to the fact that the TDL has the effect of dissuading imports. Consumers therefore do not benefit from world prices, but from local production prices, which are structurally higher, and this effect is not measured by this ratio. In reality, the impact of TDL and other customs duties on household budgets is far from negligible. TDL has a particularly strong impact on certain everyday consumer products, such as foodstuffs, building materials, do-it-yourself items, clothing and hygiene products, for which consumers pay artificially high prices. This effect is heightened by the fact that these goods weigh much more heavily on the budgets of the poorest consumers than on those of the wealthiest.

Table 13: TDL rates on selected convenience goods

Product	TDL rate
Non-decaffeinated ground coffee	20 %
Meat preparations and preserves	37 %
Fine bakery products	37 %
Shampoos and soaps	37 %
Plastic tableware	37 %
Garbage cans	20 %
Toilet paper	27 %
Handkerchiefs	37 %
Bottles, caps and food packaging	20 %
Paper and cardboard	20 %
Wood and wood products (parquet flooring, frames, joinery and carpentry, furniture, etc.)	37 %
Curtains and blinds	27 %
Traditional fabrics and clothing (tapa, pareos, tifaifai)	82 %
Malt beer	82 %
Nails, tacks, pins, staples	20 %
Fruit juices and syrups	9 à 20 %

106. If the aim is to ensure the sustainability of local production, there's nothing to suggest that this will be done at a lower cost than imports.

107. In a narrow market, where producers and importers are few in number, these tariff barriers even lead to higher prices for local products, as producers have an interest in artificially raising their prices, by setting them at a level just below that of imported products, including taxes. Moreover, by limiting competitive pressure, these barriers do not encourage local companies to

[39] With a view to becoming a free island, Mauritius has drastically reduced its customs duties since 2001. In 2005, it also abolished the distinction it had made between different customs duties, depending on the origin of imported products (a distinction between "declared" territories - Commonwealth countries and major trading partners - and "undeclared" territories - other countries).

[40] Convention N°8-0005/MIM du 23 juillet 2008 relative à une étude sur la taxe de développement local à l'importation, Paul Roger de Villers, February 15, 2009.

improve product quality or productivity.

108. However, in French Polynesia, no price moderation commitment accompanies the benefit of market protection. With the exception of PPN and PGC, margins are not capped. And in the case of PPN and PGC, control of local producers' production costs has not been systematic since 2014.

ii) At the heart of the criticisms, the TDL: distortions to the benefit of local producers, with no proven impact on employment and activity

109. According to importers and distributors, while the principle of protecting local production is legitimate, the TDL is ill-suited to its purpose. It should be noted that all players welcome the French Polynesian government's desire to reform the TDL.

110. The main criticisms of TDL are as follows:

- While the TDL was intended to have a limited lifespan, to protect infant industries in the investment phase, it has never been called into question;
- some sectors would be overprotected, with rates virtually equivalent to an import ban (up to 82%): this would create local rents and have the opposite effect to that sought, discouraging investment and product range expansion, since existing industries can sell their products without the need to innovate;
- certain products would be subject to TDL when there is no local production: this criticism should be put into perspective, however, given that 20 tariff headings have been removed from products subject to TDL as of January 1er 2019 ;[41]
- the determination and modification of TDL rates and bases would be ad hoc and based on particular interests. This situation seems to discourage new entrants and innovation, as importers and producers fear that if they were to import or manufacture a new product competing with that of an incumbent player, the tax applicable to the product concerned could be modified.

◆ *Protection is only of value if it is temporary, which was not the case with TDL, the origin of annuities.*

111. Protection is legitimate and rational if it is temporary from the outset. The aim must be to boost the productivity of the industry in question, to make it truly competitive *in the end.*

112. However, most industries in French Polynesia are unable to achieve sufficient economies of scale to compete internationally without protection. The competitiveness of locally manufactured products also suffers from French Polynesia's geographical isolation and high wage costs. As a result, the country permanently subsidizes industries that will never be competitive, in the name of safeguarding local employment. The situation creates an environment of artificially high prices.

113. This situation is destined to continue, especially as the protection afforded by the TDL provides no incentive to improve the performance of local industries. As a result, a few industries are able to benefit from the rents they enjoy, and generate substantial operating margins, even though they are not necessarily efficient.

114. It is also likely to reinforce the concentration of production within large groups. Thanks to the margins generated by products protected by TDL, they are better able to develop new activities. This is what the CESC, in a report on TDL, called the "cash cow strategy".[42] Yet local

[41] Law of the Country No. 2018-39 of December 11, 2018 on various tax measures for 2019. Article LP 12 which, among other things, abolished the TDL for salmon and imported chocolate.

[42] Conseil économique, social et culturel de la Polynésie française, Rapport sur la taxe de développement local, réforme fiscale et protection de l'emploi: quelles alternatives?, March 4, 2009.

companies would have for some, a sufficient financial base to survive the relative opening up of markets to foreign competition following a reduction in the rate or even the disappearance of the TDL. As the Tefaarere report points out, "*the TDL in fact enables certain local industrialists [...] to live for life on a rente de situation favored by governments and the administration, as there is no questioning of this protection*".[43] The DGAE website contains a form enabling local producers to request the introduction or modification of existing TDL rates.[44] This reflects the fact that the rates and base of this tax are determined on the basis of individual company requests, which are then processed by the DGAE without any objective rules being laid down. It is also a source of instability and a lack of visibility on medium- and long-term rates, which is not conducive to the anticipation of economic players and hence to economic development. The creation of a tax rent is obviously anti-competitive. It does not provide an incentive for competition on the merits, innovation and economic progress, but offers protection to those who benefit from it, to the detriment of overall economic well-being. The development of a competing local offer is made difficult by the small size of the market and the numerous barriers to entry.

- *The effectiveness of TDL in safeguarding local employment has not been demonstrated*

115. TDL poses another problem when it protects industries that are not really industries at all, since they have very little added value, or industries that are local in name only, insofar as their intermediate consumption is of foreign origin. In this case, it is diverted from its purpose, since it no longer has an industrial objective. There are many examples that illustrate this double problem: local charcuterie or corned beef made partly from imported pork or beef, local fruit juice or soda made from imported concentrate, toilet paper made from imported paper, locally assembled kitchen furniture kits, simple packaging of imported agricultural products, and so on.[45] These "industrial" products, which use foreign inputs, *ultimately* create few jobs, yet are protected from foreign competition. While some industries, which are not threatened by imports, can take advantage of the TDL to capture a rent, some others would probably not be able to survive the competition without this tax. The question is whether it makes economic sense to protect them in the name of local employment.

116. However, continuing to protect them has two long-lasting perverse effects: firstly, prices are artificially high, to the detriment of the consumer; secondly, the resources of the Polynesian economy are allocated to inefficient jobs, when it could be otherwise.

117. Admittedly, ending protection for this type of industry would create a transitional situation in which activities and therefore jobs would be destroyed in the short term, but it would enable lower prices for consumers thanks to imported products, and, in the medium term, allow a reallocation of resources towards more efficient jobs. While French Polynesia has few sectors capable of competing internationally, there are a few areas of activity in which it may have a relative advantage. The tourism industry, pearls and products derived from the *Tahitian tiare* (*mono'i)*, and even Polynesian cultural products, as well as personal services, which by definition are not exposed to international competition,[46] are thus the most efficient uses of Polynesian resources. Reducing the cost of imported products would have an effect on the cost of these services, particularly tourism. Such a measure would therefore be justified from the point of view of economic efficiency.

118. The question arises as to the volume of jobs affected by this specific protection. The study carried

[43] Tefaarere Report (2009), page 123.
[44] https://www.dgae.gov.pf/article181-taxe-de-developpement-local-tdl/.
[45] Prior to 1987, "local" coffee was even obtained from imported green coffee, as coffee imports were prohibited.
[46] As such, they require no protection: private tutoring and tutoring, small household services (housework, gardening, ironing). French Polynesia is an ideal territory for their development, not least because income disparities are so high. The Polynesian interdecile ratio (D9/D1) is 6, the same as in the United States (the figure is 3 in mainland France, which is half as unequal as French Polynesia).

out in February 2009[47] estimates that TDL protection has benefited 1,230 industrial jobs in the main sectors concerned, and 3,200 by extending it to all the sectors concerned, as well as induced jobs (those of local suppliers such as pork or pineapple producers).

Table 14: Jobs in protected sectors

Protected area	Industrial jobs
Beverages	480
Delicatessen	200
Plastic	200
Metal joinery	150
Shipbuilding	150
Cosmetics	20

Source: Roger de Villers report

119. However, even taking the highest amount, this represents less than 5% of salaried employment in French Polynesia.[48] What's more, this figure is probably overestimated, for at least two reasons. On the one hand, for a number of sectors, the TDL is not the central element of protection, so that its disappearance would not be tantamount to the disappearance of protection, or therefore of the activities concerned. Depending on the case, protection may be based primarily on other elements (quotas or import bans, as in the case of pork or pineapple juice; use-by dates for fresh products such as yoghurts; technical constraints, as in the case of aluminum joinery; brand image, as in the case of Hinano beer, for which there is a strong cultural attachment to the product...). On the other hand, even if this activity were to disappear or be reduced, a large number of induced jobs would continue to exist. For example, the pineapple growers who supply the juice factory could partly redirect their production towards exports and the local fruit market. Above all, a related question arises: how many jobs have not been created in other sectors, due to the distorting effect of the TDL? In effect, TDL sends economic agents the wrong information about prices and, consequently, the wrong incentives. By preventing prices from playing their role freely and thus optimally, this tariff protection leads to a misallocation of the country's resources. Too many resources are channelled into the protected sector - where there are no incentives for performance and innovation - and too few into activities exposed to international competition and, more generally, those in which Polynesia might have a comparative advantage.

120. In any case, as the Tefaarere report points out, "even if the notion of employment and quality are (sic) elements included in the application for protection, there is no monitoring of these elements. For example, companies are not monitored and sanctioned at all in terms of "job creation objectives", and there are no regulatory criteria for the products manufactured, which are currently subject to the TDL, especially in the food sector (no regulatory text has been adopted for food safety in the country)".[49] As a result, the mechanism only invokes the safeguarding of jobs in a tautological manner: the TDL is introduced to protect local production and employment, and therefore it safeguards local production and employment, without this effect being rigorously evaluated. In fact, the local economy would be more effectively protected by direct production subsidies (such as tax exemptions), which would make producers more competitive, without harming consumers through higher product prices. Such aids would also benefit service activities, by reducing the price of their inputs.

◆ *Taxing certain products creates distortions*

121. The TDL is also described by some as a "blind" tax, in that it applies to entire customs

[47] Roger De Villers study (2009), p 35.
[48] 65,682 salaried employees reported in November 2018 (ISPF data, April 2019).
[49] Tefaarere Report (2009), p.123

nomenclatures, often old and designed for the European Union. These nomenclatures are often too generic, and lead to imports of goods not produced in Polynesia being taxed. For plastics, for example, any product containing plastic, whatever its use, is assigned to the same customs heading if it does not have its own heading. This includes many products not manufactured in French Polynesia. This is particularly true of certain pharmaceutical products, such as amniocentesis plates, syringes and pipettes, which are taxed at 37% even though they are not produced in the territory.

122. However, the players feel that it is complicated and time-consuming, with uncertain results, to ask the administration to integrate additional levels of detail within a customs nomenclature heading.

◆ *TDL does not appear to be the best tool for defending local activity*

123. Whatever the case, in terms of products targeted or rates applied, it appears that the TDL is likely to generate perverse effects, potentially higher than its effects on local production and employment. Several situations are particularly problematic: i) when a non-locally produced good is taxed, the TDL contributes to raising the price of imported goods, with no effect on local production. In this case, the tax has only a budgetary purpose, equivalent to a customs duty; ii) when a product is taxed at a high rate, the effect of the TDL is close to that of an import ban and leads to situations of local rent, *a fortiori* if the market is too small to allow the emergence of several producers. This leads to a scarcity of investment, as existing industries can sell their products without the need to innovate. In reality, the handicap of local production is over-compensated.

124. Only the case of a low TDL on a locally-produced good can have a positive effect, provided that the (moderate) price rise it entails is more than offset by the stimulus represented by potential imports on the productivity and innovation of local firms.

Table 15: Economic impact of TDL

Local production	Rates	Example	Impact on local production	Effect on price	Effect on quantities consumed	Tax yield	Effects on innovation or quality
Yes	High	Beer	High	Sharp rise price	Depends on substitutability of the product concerned	Low (few imports)	Negative (annuity)
Yes	Low	Tourist or general-interest brochure	Positive but weak	Low increase price	Low	Low	Positive but weak
No	Medium	Chocolate (before 2019), orange juice, fruit syrups mint and grenadine	Null	Price increase	Depends on substitutability of the product concerned	Potentially high	Null

125. In this way, the TDL, which was intended to encourage the emergence of local production, is not fulfilling its role perfectly. Either it only has a budgetary objective, without protecting producers (in the case of products not produced locally), or conversely, it leads to a drying up of imports in favor of local production, but excessively so, leading to situations of rent with no advantage for the consumer, either in terms of price, quality or range.

126. In any case, the original purpose of the TDL, which was to enable local companies to make the initial investments needed to gain access to the Polynesian market, has clearly been lost sight of.

iii) Import duty rates also have structural effects

- *Reduced customs duties for the benefit of the European Union penalize products from the countries geographically closest to us*

127. Local law no. 2011-33 of December 9, 2011, introducing various import tax measures as part of the French Polynesia budget for fiscal 2012, introduced a specific customs duty regime for the European Union, with reduced rates on a large number of tariff headings. This measure gives European Union countries a comparative advantage over other countries, despite Polynesia's relative proximity to major markets such as New Zealand, Australia and, above all, the Asian and American continents.

128. If EU and non-EU customs duties were identical, importers and distributors could benefit from lower freight charges by giving priority to trade with the closest geographical zones, which could enable them to charge lower prices to the end consumer.

- *Vehicle registration tax boosts dealer activity*

129. Another example of tax-related distortion concerns vehicle imports. In addition to the various import taxes, which apply to both new and used cars, the tax on the registration of a car on Polynesian territory (amounting to between 4% and 11% of its value plus import duties and taxes) is increased by 3.5 points for a used car, and by 5 points for each year of age, which can quickly add up to very substantial amounts.

130. It therefore represents a strong competitive advantage for local dealers, as it favors either the import of a new vehicle (for which they benefit from exclusive import rights), or the acquisition of a used vehicle already on the road in Polynesia, sold for the most part by dealers.

c) Tariff protection is conceivable, but its objectives and duration must be precisely defined.

131. While protection is legitimate in certain cases, we must avoid overcompensating for the handicaps of local production, particularly over time.

132. A parallel can be drawn between the TDL and dock dues, in force in overseas departments and regions since law no. 84-747 of August 2, 1984, which authorized the collection of this long-standing tax by regional councils as part of the decentralization process. In theory, dock dues apply to both imported and locally produced goods, but a distinction is made between "external" dock dues for imports and "internal" dock dues for local products, which are usually taxed at a lower rate (this is known as differentiated taxation). In this case, the effect is identical to that of the TDL, since a specific tax, distinct from customs duties, is applied to imports.[50]

133. However, a report by the French National Assembly in January 2013 points out that "on a macro-economic level, the dock dues tax is criticized for being inflationary, because the margins (of the importer-wholesaler, the semi-wholesaler, the retailer...) are cascaded onto a base price which, precisely because of the upstream dock dues, is higher than it would be if there were no dock dues, and therefore higher than it would be in mainland France, all other things being equal. Added to this is the fact that, when dealing with an imported product, the base price of the product includes the cost of insurance and freight, with the result that dock dues are applied to this

[50] By way of derogation from the rules of the single market, France obtained authorization from the Council of the European Communities to fully or partially exempt local production from this tax *"in view of the handicaps affecting industrial production activities in the French overseas departments"* (initial decision no. 89/688/EC of December 22, 1989). This authorization was extended by two Council decisions of February 10, 2004 (n°89/688/EC) and December 17, 2014 (n°940/2014/UE)0.

higher cost".[51] According to an April 2015 Senate report[52] (...) the French government commissioned Louis Lengrand, a consultancy firm, to carry out an evaluation of the dock dues system in the French overseas departments. / In its conclusions, published in June 2012, the firm stressed the vital importance of the dock dues system in supporting local producers, since the tax differential can represent between 20% and 50% of the value added of these businesses. / (...) The study carried out by the Lengrand firm also tends to demonstrate that the dock dues system does not appear to overcompensate for the handicaps suffered by local products, nor does it distort competition or create a situation of rent for local production in the overseas departments. While the market share of local production has tended to increase since 2005, imports of equivalent products have not decreased over the same period. Finally, with regard to the impact of this measure on employment, the Lengrand study estimates that "companies benefiting from the tax differential are able to pay their employees at levels equivalent to those in metropolitan France for the same sectors. This also enables them to counter the attractiveness of the public sector, where salaries are 40% to 60% higher than in mainland France".

134. However, these conclusions need to be put into perspective. The tax environment is different in the French overseas departments and territories. The international trade agreements signed by the European Union and the ensuing Community customs tariff apply. The DROMs are therefore totally open to European Economic Area countries, and relatively open to third countries in terms of customs, particularly the ACP countries in their immediate vicinity. As a result, their overall import tax rate remains low. And if, *in the final analysis, the* effect of dock dues on prices is in fact limited, it is because *"aggregation of the various rates applied in the overseas departments (in terms of VAT, tax on petroleum products, etc.) reveals a level of taxation comparable to that observed in mainland France".*[53]. This is not the case in French Polynesia, where customs duties are already high. The senators point out that dock dues are offset by reduced VAT rates in the French overseas departments, whereas in French Polynesia, the effect on the price paid by the consumer must include value-added tax and ordinary customs duties. While these conclusions support the legitimacy of a scheme to protect local industry in small island economies, they cannot be taken at face value.

135. Above all, the system in force in the French overseas departments and territories must regularly demonstrate its effectiveness to the European Commission, so that the derogation it enjoys can be renewed. According to the Senate's report: *"In a report submitted to the Council on December 14, 2010, the European Commission stated that 'the differentiated dock dues system has made it possible to maintain, for the majority of the products concerned, local production capable of occupying a greater or lesser share of the local market. It is highly probable that, without the existence of this differentiated taxation, in many cases local production activity would not have been able to maintain itself, with damaging economic and social consequences". It regretted, however, the lack of a precise assessment of the impact of the tax differential for each product category concerned, the fragmentary nature of the information obtained on the impact of differentiated taxation on growth, employment and the profits made by companies in each sector considered, and the lack of information on the effect of the differentiated taxation system on price levels".*[54] These conclusions, which gave rise to the above-mentioned economic study, highlight the need for a rigorous and regular analysis of the merits of the current regulations. This should take the form of a precise evaluation, by product family, of the effects of the regulations on prices, employment, import volumes and local production volumes. For each product family, this assessment should lead to a regular review of the appropriateness of maintaining its inclusion on the list of TDLs, and of whether or not to revise the rate applied.

[51] Assemblée nationale, "L'octroi de mer, un enjeu stratégique pour les économies ultramarines", information report no. 659 presented on behalf of the Delegation for Overseas France by Messrs Mathieu Hanotin and Jean Jacques Vlody, January 29, 2013, XIV[e] Législature.
[52] Senate, April 15, 2015, report made on behalf of the Finance Committee on the bill amending law no. 2004-639 of July 2, 2004 relating to dock dues, by Mr. Éric Doligé, Senator.
[53] Senate (2015), cited above.
[54] Senate (2015), cited above.

2. NON-TARIFF BARRIERS TO IMPORTS

a) Overview of quantitative barriers: quotas and import bans

136. The import regime for products subject to foreign trade controls is governed by Order no. 861 CM of June 22, 1999. Products are classified into four categories (article 2):

- suspended goods, which Polynesia refuses to import (Annex I);
- goods subject to competitive bidding (Annex II), for which a total import quota is set, to be shared between the companies selected through the bidding procedure. This system concerns three essential products: rice, flour and sugar;
- non-released goods whose import is either subject to quotas or controls (Annex III);
- liberated goods, which are free to import.

137. In addition, sanitary or technical regulations may have the effect, if not the purpose, of limiting imports of certain goods.

138. Polynesia therefore makes full use of the quantitative protection available under its trade policy. Only released goods are imported without formalities. All other goods are subject to an import license prior to order confirmation.

i) Import bans

139. A number of products are subject to import bans, whether for strategic or health reasons. The lists of products are long and give an idea of the extent of protectionist barriers in French Polynesia.

140. The following products are banned from import, whatever their origin:

- Meat of swine, salted or in brine, dried or smoked.
- Fish, fish fillets and other fish meat.
- Strasbourg, Frankfurt, Vienne, Toulouse, Montbéliard, Morteau, chipolata and crépinette sausages.
- Cooked sausages such as garlic sausage, mortadella and saveloy.
- Hams and shoulders of the "jambons de Paris" or "jambons blancs" type presented in hermetically sealed metal cans weighing more than 500 grams each, or presented otherwise than in metal cans.
- Prepared or preserved meat of swine in brine, in hermetically sealed cans weighing more than 500 grams each, or otherwise presented.
- Pineapples prepared or preserved without alcohol.
- Pineapple juice, beverages and juice mixes containing pineapple juice.
- Nono fruit juices, beverages and juice mixes containing nono fruit juice.
- Concentrates, extracts and other tropical fruit or citrus-based products of non-EU origin.
- Bleach, ordinary soaps, liquid dishwashing detergents and fabric softeners.
- Fine pearls and cultured pearls of the "black pearl or tinted pearl" type.
- Slot machines.

141. The following products are banned for import, if they originate from overseas countries and territories (OCTs) or third countries (outside the EU)[55] :

- Prepared yoghurt.
- Corned beef.
- Grapefruit or pomelo juice.

142. Finally, other products are banned for import if they originate from non-EU countries:

- Veal carcasses exceeding 40 kg or half carcasses, fresh, chilled or frozen.
- Fresh, chilled or frozen beef and veal carcasses or half-carcasses.

ii) Goods placed under tender, with import quota

143. These include certain staple products (PPN), such as unflavored white rice, flours for the manufacture of price-regulated baguettes[56] and certain sugars.

◆ *Rice*

144. Rice regulations were amended by Order no. 344 CM of March 31, 2016. Until then, import conditions, prices and margins for wholly milled or semi-milled unscented rice were subject to a tender procedure[57]at the end of which the successful bidders were the only ones authorized to import the product, *by* obtaining an import license. The maximum wholesale price was set at 89.5 F CFP/kg and the maximum retail price at 100 F CFP/kg. Maximum margins were also set at 7.5 F CFP/kg for the importer and 10.5 F CFP/kg for the distributor. Finally, a warehouse delivered price (PRE) ceiling was set at 120 F CFP/kg. The Fonds de stabilisation des produits de première nécessité (FSPPN) then assumed responsibility, if positive, for the difference between *"on the one hand, the sum of the actual delivered warehouse price (PRE) of the product on import within the limit of the PRE ceiling [...] and the importer's maximum margin [...], and, on the other hand, the regulatory wholesale price"*. In other words, if the ERP declared by importers remained below 82 F CFP/kg, the mechanism was in equilibrium and the country was not subsidizing the import and distribution of PPN rice. In reality, however, both importers declared an identical ERP, very close to the ceiling ERP of 120 F CFP/kg. As a result, each kg of PPN rice imported was subsidized up to a maximum of 38 F CFP/kg by the FSPPN, and therefore by the country's budget.

145. The arrival of a new operator highlighted the inefficiency of the system, which did not encourage price competition between the two importers, and instead encouraged them to make the ceiling price the only price. However, the new operator on the market managed to offer an ERP of 83 F CFP/kg, by importing rice not from Thailand like the other two importers, but from Vietnam.

146. The country then stopped subsidizing rice through the FSPPN, while maintaining it on the list of PPNs[58] and in the tendering system. In so doing, it saved some 300 million F CFP each year, while putting an end to a situation that had given the two incumbent operators on the market an advantage. It also re-establishes price competition, since a new entrant to the market, if it wants to establish itself and win market share, has no choice but to position itself aggressively in terms of price. *Ultimately*, it's Polynesian consumers and public finances benefit. The new competitive situation means that the regulation of prices and margins in this market is gradually coming to an end.

[55] With this typology, which gives a relative disadvantage to products from third countries, Polynesia deprives itself, as with customs duties, of the benefits of its relative geographical proximity to major countries (United States of America, Australia and New Zealand).
[56] Baguette production is subsidized in French Polynesia, with the retail price set at 53F CFP for a 250g baguette.
[57] Governed by order no. 2557 CM dated December 30, 2009 and by order no. 180 CM dated February 18, 1994, amended.
[58] Margins and maximum prices therefore remain fixed.

◆ *Flour and sugar*

147. Imports of type 55 flour intended for the manufacture of price-regulated baguettes, as well as those of white sugars, are subject to similar procedures. Only the winners of the tender are allowed to import the product. This licensing system, coupled with the introduction of a global import quota to be shared between operators, also tends to lock in acquired market positions.

148. Subsidizing baguettes made from flour imported for this purpose entails a significant cost for local public finances, on the order of 500 million F CFP per year.[59] Indeed, importers offer a bid price of 57.35 F CFP/kg. With a wholesale flour price set at a maximum of 19.3 F CFP/kg, the FSPPN subsidizes the product to the tune of 38.05 F CFP/kg, multiplied by the more than 13,000 tonnes involved each year. If the country decided to stop subsidizing the product, the gain for public finances would be the same amount. The effect on baguette prices, if deregulated, would also be limited. Assuming that each price-regulated baguette is made with 150 to 200 grams of flour (flour makes up around 2/3 of the weight of the baguette, whose minimum weight is 250 g)[60], the subsidy per baguette is between 5.7 and 7.7 F. CFP only.[61] In the absence of a subsidy, the 500 million F CFP saved could be used, in whole or in part, for social justice measures specifically aimed at the households that the PPN regulations are supposed to target. It therefore seems possible to reconcile market competition, economic efficiency and equity.

iii) Goods with import quotas

149. Numerous food products are subject to quantitative import restrictions, creating a barrier to foreign operators entering the Polynesian market. This applies to the following products:

- Poultry of the laying hen breed ;
- Pork meats ;[62]
- Eggs ;
- Vegetables (eggplant, carrot, cauliflower, broccoli, cucumber, zucchini, green bean, lettuce, turnip, green onion, parsley, leek, bell pepper, radish, chicory lettuce, tomato);
- Fruits (lemons, letchis, mandarins, melons, oranges, watermelons) ;
- Wheat flour

150. Imports of many fruits and vegetables, in particular, are subject to a system of prior administrative authorization, with import quotas determined at agricultural conferences.

151. The first two articles of decree no. 1283 CM of October 20, 1986 on the import regime for fresh fruit and vegetables stipulate that the import of several types of fresh fruit and vegetables is prohibited, but that the "*Consultative Conference" set up by decision no. 762 AE of October 13, 1978 may propose to the Minister for Foreign Trade the opening of seasonal import quotas when local production (...) proves insufficient*. Article 3 of the same decree specifies that "*the allocation of these quotas is carried out by the General Directorate of Economic Affairs to licensed importers-traders only*". This "consultative conference", commonly referred to as the "agricultural conference", was originally set up to establish price proposals for agricultural

[59] See also the following article on this subject: https://www.tahiti-infos.com/La-baguette-a-53-F CFP-coute- 500-millions-par-an-au-Pays_a123440.html.
[60] Order no. 697 CM of July 8, 1996 concerning the marketing of bread in French Polynesia.
[61] That's 13,000 tonnes / 150 to 200 g = 65 to 86 million baguettes produced annually, subsidized to the tune of 500 million F CFP.
[62] Since decree no. 1067 CM of October 5 1990, updated by decree no. 593 CM of June 15 1994, the import of certain finished charcuterie products has been prohibited. These prohibitions are listed exhaustively in article 1er . Articles 2 and 3 stipulate that only parts used in the preparation of charcuterie products may be imported, subject to an import license issued only to the two processing industries. / Decree no. 1037 CM of 1995 on the import regime for pork meat stipulates in article 1er that: "*in order to promote the development of pig farming in the country, fresh, chilled or frozen pork meat, falling under customs tariff number 02.03, from all origins and sources, is subject to the import quota regime*".

products. Although this mechanism was suspended in 1981[63] and the article creating the conference was repealed in 2014[64] it has continued to sit without any legal basis other than the above-mentioned. On the other hand, an amended decree no. 861/CM of June 22, 1999, setting out the import regime for products subject to foreign trade control, introduced the notion of "quotas", set by the agricultural consultative conference, into its Annex III.

152. In concrete terms, this involves a meeting held every last Tuesday of the month, bringing together between 20 and 30 members - mainly representatives of local agricultural producers, interested professionals (importers, hoteliers, retailers), two consumer representatives and government departments - to discuss harvest forecasts and gather their opinions on opening and setting quotas for imported products for the following month, in the event of insufficient local production. At the end of this meeting, and on the basis of the views expressed by the members of the conference, the decision on whether or not to open the market is taken by the Minister for Foreign Trade (who also decides in the absence of a consensus). Specific quotas for organic products and hotels are sometimes granted. Import quotas are then distributed among importers, in principle according to volume, but also according to the share of local production in purchases, which must give rise to additional quotas. Import licenses are issued by the DGAE.

153. It is therefore an essential mission, but one that is defined very succinctly and without any legal basis.

iv) Sanitary and technical rules

154. It is not for the Authority to judge the relevance of the sanitary rules in force, which aim to protect the quality of construction, the health of the population, or the flora and fauna of French Polynesia. However, while at first glance none of the regulations mentioned in the course of the investigation appear to have an anti-competitive purpose as such, some of them do, however, appear to have an anti-competitive purpose as such, particularly when they favor or penalize local production.

155. In the case of fruit and vegetables, for example, several operators regret the total ban on imports from certain countries. Indeed, while Latin American countries such as Mexico and Peru, whose climate allows year-round agricultural production (e.g. strawberries, asparagus, etc.), could supply the Polynesian market, their agricultural products are banned in the name of health regulations. The same applies to meat from Uruguay or Argentina, which is less expensive than New Zealand meat and less subject to price variations.[65] While products from these countries may have posed health problems in the past, several importers report that they have improved. However, the restrictions have not been lifted, and import certificates are only issued on a case-by-case basis, at the request of the importer, who then has to take onerous and dissuasive steps to obtain the necessary technical information from a supplier for whom the Polynesian market is far from strategic, and without any certainty as to the outcome of the procedure. In particular, there is no clear and transparent list of authorized products and countries. As the protection of the public health of Polynesians and the community's environment is a priority, it is not conceivable to blindly lift all restrictions. Operators are proposing the introduction of regular reviews of restrictions, allowing a greater variety of imports, while respecting health and environmental obligations.

156. With regard to shrimp, very strict regulations on raw shrimp imports have been put in place, to protect the local industry from diseases and pathogens and ensure its development. Since February 2017 in particular, their import has been totally banned (before this date, some cooked raw shrimp could be imported). However, contrary to the commitments made, there has been

[63] Decision no. 1366 AE of April 2, 1981.
[64] Order no. 680 CM of April 24, 2014.
[65] New Zealand meat is subject to stock shortages and significant price fluctuations, both as a function of the season and because of the diversification of its clientele, particularly in the Middle Eastern and Chinese markets (hence, for example, the sharp rise in demand and hence prices during the Chinese New Year period).

no development of local production, which represents less than 10% of consumption (40 tons out of 450 tons consumed), but on the contrary a rise in prices, given the limited choice of cooked shrimp imports.

157. For fresh meat, there are two sanitary requirements concerning use-by dates[66] i) they must be less than eight weeks after slaughter (as opposed to fifteen weeks in many countries) and ii) they must be no more than eight days from departure from cold storage in Tahiti, whatever the initial use-by date.

158. These rules, which date back to an era of poor cold chain management, would have consequences for those involved in the supply chain:

- For importers, the eight-week lead time means that only imports from New Zealand are possible, making importers captive to their suppliers and limiting price competition. A longer lead time would enable better prices to be obtained, for example from France.
- For distributors, the eight-day lead time makes it difficult to supply islands other than Tahiti, and reduces the rate at which production can be sold.

159. In the case of yoghurts,[67] it is forbidden to import yoghurts with a shelf life of less than 28 days, which means that they can only be transported by air, considerably increasing their price. *Ultimately,* this rule would be very favorable to local production.

160. When it comes to building materials, European Union standards (CE or NF) are often imposed on prime contractors (architects) and contracting authorities, notably in the CCTPs of public procurement contracts, not so much because of applicable regulations as because of insurers' requirements. These include, for example, standards relating to the resistance of materials (to bending, compression, termite or fungal attack, etc.). Importers have to adapt and bring in products that meet these standards, or equivalent products, or risk being held liable under the ten-year warranty. This inevitably raises costs and limits the number of candidates for tenders, even though these standards, designed for European climates, are not always appropriate. A review of all these rules and a simplification of procedures could facilitate lower-cost imports. Local classification of materials, particularly wood, would have the advantage of facilitating sourcing and developing a local industry, as has been done in New Caledonia.

b) The effects of quantitative protection on well-being

i) Generally speaking, economic analysis concludes that quantitative barriers to trade are ineffective.

161. The welfare loss for the economy is equivalent to that induced by tariff protection, with the difference that quantitative protection does not allow the country to collect tax revenues. *Ultimately,* the dry loss to the economy is greater than that caused by import duties and taxes.

162. Firstly, quotas isolate producers from potential competition from imported products. This exacerbates the natural isolation created by approach costs and tariff barriers, and gives them greater market power. This effect is detrimental to consumers, as local producers' production costs are high, given the small size of the Polynesian market and the impossibility of achieving economies of scale on a large scale.

163. Conversely, the restriction of supply sources for consumers (professional or otherwise), which strengthens the market power of producers, limits the countervailing power of importers-wholesalers and purchasing groups, and carries a risk of "abuse of exploitation" by the producer placed in a dominant position by the protective measure. He thus has a particular responsibility

[66] Arrêté n° 1119 CM du 9 octobre 2006 relatif aux durées maximales de conservation de certaines denrées alimentaires animales ou d'origine animale.
[67] *Ibid.*

to ensure that his behavior does not undermine effective and undistorted competition on the markets, in particular by charging unfair prices to his economic partners.

164. Secondly, the introduction of quotas induces a phenomenon of relative scarcity of products, with the possibility of shortages as a limiting factor. In addition to restricting consumer choice, this situation has a related effect on prices: the relative scarcity of quota products pushes up their prices, to the detriment of consumers.

165. The situation is paradoxical in some cases, since quota products do not really compete with local production: competition is in fact nominal. For example, an imported tomato competes with a local tomato, and imported eggs compete with local eggs. However, for some products, local production is unable to meet domestic demand. As import quotas are only opened periodically, and are often too low, shortages are not uncommon in French Polynesia, and the prices of the products concerned can soar. Local production of certain products banned from import, such as honey, is notoriously insufficient to satisfy domestic demand. This can lead to circumvention of regulations and parallel imports of the products concerned.

166. Furthermore, these quantitative restrictions tend to freeze competitive positions on the markets. New entrants are disadvantaged by being allocated lower import quotas than operators already established on the market. This limits the positive effects of price competition that could result from the market entry of these new operators.

167. In this context, only holders of import licenses enjoy a kind of rente de situation. They are able to resell at high prices products purchased much more cheaply elsewhere.

168. Thirdly, quotas lead to higher prices for imported products. This can lead to a scramble for products that are in high demand but in short supply. Importers/distributors may also choose to favor top-of-the-range products to satisfy the more affluent, less price-elastic segment of demand, to the detriment of poorer consumers (inflationary effect).

169. Quantitative restrictions inevitably lead to a reduction in the diversity of products available to local consumers and professionals alike, which is particularly serious when the restriction concerns a wide customs tariff including products not produced locally, or when the volumes produced locally are insufficient to satisfy demand (crowding-out effect).

170. Finally, while quotas have the same protective effects as tariff barriers, they do not have the same impact in terms of economic efficiency. Indeed, the introduction of quotas does not provide French Polynesia with any additional tax revenue, unlike import taxes. Thus, the "*d*" area highlighted *above* in the analysis of the effects of tariff protection also disappears *(*see § 98). As a result, the deadweight loss for the economy amounts to the triangles "*c* + *e*", plus the rectangle "*d*" (deadweight loss = *c* +*d* +*e*). These are welfare losses due to distortions in consumption and production, as well as the disappearance of the country's tax revenues.

ii) These theoretical reserves are illustrated by the effect of fruit and vegetable import quotas

171. It turns out that import quotas have inflationary effects, without having any significant effect on improving local production, whose consumption coverage rate has been falling for 10 years.

172. In the course of the investigation, numerous criticisms were levelled at the operation of the fruit and vegetable protection system, echoing those in the report by the CTC of French Polynesia:

- There is still protection for certain products, even though local production has been non-existent for several years (cauliflower and broccoli in particular), which, even if quotas are opened up, forces companies to follow a complex import authorization process.[68]

[68] These goods can only be imported after the Agricultural Conference has noted the monthly shortage of local production (which is permanent), and the proposal to open up the market to imports is also recorded in a monthly decree. Following this regulatory text,

- Production forecasts, collected ex ante by agents of the Chamber of Agriculture and Fisheries of the Lagoon (hereinafter "CAPL"), are highly imprecise and incomplete, and meetings are held on the basis of production promises, which are often overestimated.[69] Recently, for example, carrot imports were not authorized at the end of December, after the harvest, on the grounds that stocks needed to be cleared, then reopened because there were in fact no stocks. The result was a shortage in the stores.
- Consumption forecasts, which directly determine the estimated level of demand, are based on an old study by the TNS-SOFRES institute, and in reality do not reveal agents' preferences. Indeed, agents make their purchases in a context of chronic shortages and high fruit and vegetable prices. There is therefore certainly a situation of under-consumption compared to that which would prevail if imports were open and prices lower.
- The administration's *ex-post* control of the match between forecasts and actual production (in the case of agricultural conferences), or of production costs (in the case of PPNs), is not carried out, and farmers are not required to draw up and supply either their accounts or data on their actual production.
- Quotas granted to importers are rarely revised, and positions remain unchanged. In particular, some importers who have developed a production activity still have large quotas. What's more, unlike the system in force in New Caledonia, when an importer does not use up his quota, it is not redistributed to the others, nor can he give it up. This exacerbates the risk of shortages and freezes the situation between importers. However, the quota distribution key could be an effective lever for promoting the objectives of the country's agricultural policy, by favoring importers-wholesalers who contribute to it (for example, by selling a significant proportion of local products).

173. As a result, economic players cannot act according to the usual economic signals.

174. Producers have no incentive to produce at the best possible cost, nor to ensure the quality and diversity of their products, since they can be sure of selling their production when the external market is closed until stocks are almost exhausted. In the absence of systematic control, they are also encouraged to artificially inflate their production forecasts, in order to avoid the opening of quotas and thus ensure that they can sell their production at high prices. In a way, shortages are organized under the guise of market protection. Their only objectives are quantitative.

175. Consumers, for their part, suffer from frequent shortages of certain products, have no access to a wide range of quality products, and are in reality unable to carry out a choice between local and imported products, since imports are used only as a last resort, to complement local production.

176. Lastly, given the way the market operates, in which any import quotas are determined at the very end of the month for the following month, the system does not allow importers and distributors to anticipate their purchases, particularly abroad, even though this is a prerequisite for secure, low-cost, high-quality supplies. Indeed, when a product closed to imports suddenly opens up, it takes several weeks to obtain supplies. What's more, the regulatory and administrative process takes a long time to adapt supply to demand. Having to wait for a regulatory text and obtain a license before placing an order, which costs time and money, gives wholesaler-importers little visibility.

importers obtain a license from the Directorate General of Economic Affairs to import products that do not compete with any local product, in quantities of less than 200 kg in some cases.

[69] This point was also raised by the Collectivité itself in an audit report in April 2015: "Rapport définitif d'audit relatif à l'évaluation du dispositif réglementaire de la CAPL": "*However, certain missions are not carried out by the CAPL. For example, the one relating to the provision of forecast information on agricultural production, which is lacking, deprives the agricultural conference of objective data for the opening or not of import quotas*".

3. PRICE REGULATION

177. In principle, prices are free, but there are a number of mechanisms for setting regulated prices or margins.

178. Article LP 100-2 of the French Competition Code, introduced by the country's amended Competition Act No. 2015-2 of February 23, 2015, states in its first paragraph that "*Except in cases where the laws of the country provide otherwise, the prices of goods, products and market services are freely determined by competition".*

179. However, it is tempered by the following two paragraphs of the same article, which state that "the foregoing provisions shall not prevent the Council of Ministers, after consulting the Polynesian Competition Authority, from regulating prices, particularly in sectors or areas where price competition is limited due to monopoly or oligopoly situations, lasting supply difficulties, or commercial under-equipment.
/ The Council of Ministers may also, in the event of excessive price rises or falls, take temporary measures, the duration of which may not exceed six months, motivated by a crisis situation, exceptional circumstances, a public calamity or a manifestly abnormal market situation in a given sector".

180. Furthermore, the Competition Act was not intended to abolish existing provisions. Article LP 3 of the law stipulates, under the heading of transitional and derogatory provisions, that "*regulations setting prices or margins for products and services remain in force and are subject to modification*".

181. In accordance with the provisions of order no. 171 CM of February 7, 1992, products are classified into four distinct categories:

- basic necessities" (PPN), with a maximum margin in absolute or relative terms (mark-up);
- fast-moving consumer goods (FMCG), with a maximum margin in relative value ;
- products whose margin is capped in relative value ;
- products benefiting from total price freedom.

182. On April 2, 2019, the Authority issued a specific opinion on the regulation of basic necessities..[70] In it, it describes in particular the lack of a precise definition of the general interest pursued by this regulation (access to goods for the most disadvantaged, combating high prices, etc.). In view of the high cost of this system, it recommended that general price regulation be replaced by other, more limited or exceptional forms of support, which would be better suited to achieving the objectives set. Given the high cost of the system, it recommended replacing the general price regulation with other, more limited or exceptional forms of support, better suited to the objectives set, and, in the alternative, radically reforming the regulatory system, in particular by restricting the list of PPNs and favoring price rather than margin ceilings, at least for local products. The findings of this new opinion are unanimous: price regulation today is the source of distortions in the economic incentives of players, and of inflationary effects. This observation has therefore remained unchanged since the opinion on PPN.

183. The main criticisms are as follows:

- The objectives of price regulation are not sufficiently defined and are sometimes contradictory: favoring local production, for example, can be to the detriment of the consumer, including the most modest households.
- Price regulation limits the quality and diversity of goods, since it discourages the import of quality goods, *a fortiori* when the margin is fixed in value, and limits the possibilities of diversifying consumption through substitution between products.

[70] APC Opinion No. 2019-A-01 of April 2, 2019 on the effects of regulation on the competitive operation of staple goods markets.

- Price regulation is the source of price distortions, and in particular of a windfall effect benefiting affluent households, since they benefit from tax exemptions, public subsidies and capped margins for products they would have purchased anyway. This is also true for FMCG products with regulated margins.
- Price regulation is inflationary. In fact, there is no incentive for importers to lower the purchase price of goods, quite the opposite: when the margin is in absolute terms, there is less incentive to do so; when the margin is in percentage terms, it is better to keep the purchase price as high as possible. In fact, the system is abused by players (importers and/or distributors) who employ several techniques:
  - Artificially increasing the c.i.f. purchase cost on which the margin is calculated, especially when the margin is calculated as a percentage (by creating intermediary structures, resorting to over-invoicing on these products by the supplier, setting back margins, etc.).[71]
  - Equalization between products, with a widening of the range of non-PPN products and a catching-up of margins on these products. The DGAE, in its response to the Autorisé, states that free-price products *"enable distributors to rebuild their 'constrained' margins"*.

184. As a result, the system seems to be abused by its various stakeholders, who artificially increase the price at which the mark-up is applied (notably through back margins), do not give priority to importing quality products, and equalize with the range of free-price products.

185. Empirically, sales margins are higher for free-range products than for PPNs. Brand rates (ratio of gross margin to selling price) average 51% for free range products versus 27% for PPNs, and brand rates are higher for PPNs than for free range products margin (ratio of gross margin to supply costs) of 105% for free-range products versus 37% for PPN.

Table 16: Cumulative margin rates for wholesalers and retailers by product

	Free products	PGC	PPN	All Products
Total cost of supply excl.	42	59	73	44
Sales margin (importer+retailer)	44	35	27	44
Retail price excl.	87	94	100	87
Margin rate (margin/purchase cost excl. VAT)	**105 %**	**60 %**	**37 %**	**100 %**
Brand rate (margin/sales price excl. VAT)	**51 %**	**38 %**	**27 %**	**50 %**

Source : APC

186. In addition, cost price controls, to which the margin is applied, appear insufficient for local production. Indeed, while data concerning imports are systematically declared[72] the cost of local production has not been monitored by the DGAE since the repeal by Order 680 CM of April 24, 2014 of Decision 762 AE of October 13, 1978, which provided for the approval of producer prices for locally manufactured products on the basis of cost accounting data provided by the applicant companies. As a result, production costs are now only monitored on an ad hoc basis. This price control is costly for the country. The PPN scheme alone cost 1.431 billion F CFP in tax exemptions in 2018, to which must be added the cost of inter-island transport (477 million F CFP in 2017). In addition, other price regulation measures have a budgetary cost, such as flour imports (for a cost of 500 million F CFP, see § 147 and following). All these measures also require substantial administrative resources. Direct or fiscal expenditure probably amounts to nearly 2.5 billion F CFP per year.

187. It is clear from the above that the amounts devoted to this action do not translate into equivalent price cuts, but are partly captured by intermediaries, and that schemes better targeted at

[71] The Tefaarere report, which interviewed New Zealand meat and cement exporters, states that, according to them, these margins, which artificially increase the cost of PPNs in particular, amount to between 20% and 40%.
[72] See modified decision no. 761 AE of October 13, 1978.

consumers could - at a lower cost - have at least an equivalent effect for the most modest households.

C. MARKET STRUCTURE

188. It appears from the investigation that, for a retail price of 100, the cost of purchasing the goods represents around a quarter of the price, with approach costs and duties and taxes each accounting for 8% and VAT 13%. Together, these amounts represent just over half the price. The balance, 43.6% on average (50% of the price excluding taxes), is made up of the margin of distributors, importers-wholesalers and retailers.[73] These margins are primarily used to cover marketing costs (structure, storage, distribution, communication, etc.). The balance constitutes the company's profit (net margin).

Table 17: Cumulative margin rates for wholesalers and retailers

Total cost of supply excluding VAT	43,7
Sales margin (importer + retailer)	43,6
Sales price excl.	87,3
Margin rate (margin / purchase cost excluding VAT)	**100%**
Brand rate (margin / sales price excluding VAT)	**50%**

Source : APC

189. These amounts are very close to those in the Tefaarere report,[74] citing the FGC. It estimated that distribution costs averaged 20-25% of pre-tax sales for the importer and 20-25% for the retailer, for a total of 40-50% of pre-tax sales.

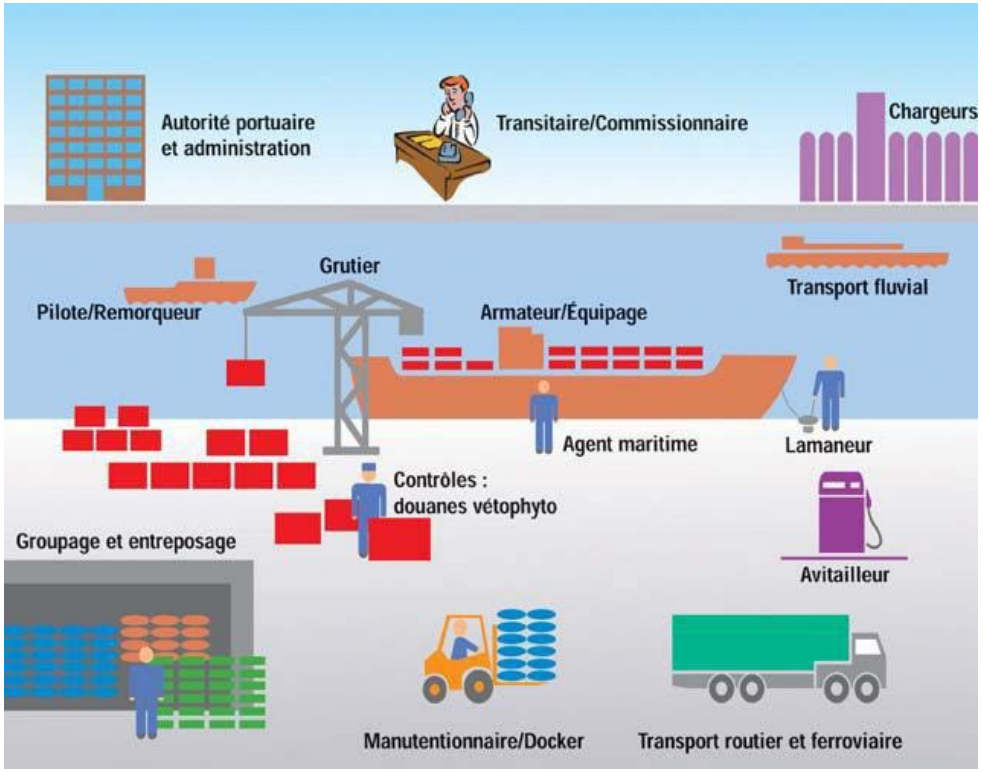
190. However, at all stages (manufacturers, transporters, importers and retailers) these different costs could be reduced by a more stimulating competitive environment, enabling companies to achieve productivity gains and cut costs to gain market share.

1. TRANSPORTING GOODS

191. The transport of goods is not the work of a single player, but of a complex chain, covering the goods' journey from their place of production to the importer's storage facilities, as well as all the administrative, customs and tax formalities required.

[73] See § 59 ff.
[74] Tefaarere Report (2009), pp104-105.

Figure 16: General diagram of the organization of maritime players in the handling of import goods



Source: Union des ports de France

192. The aim is to examine the various elements of the logistics chain, to see where there are opportunities for improvement. This is a crucial issue, because given the weight of imports, if inefficiencies exist at the point of goods entry, they will be reflected throughout the value chain (starting with taxes, which are based on a CIF price that includes the cost of transport).

a) Freight: a high concentration on the line from Europe and the low capacity of the port of Papeete result in high costs.

193. The port of Papeete is served by 2 types of lines:

- Long-distance "*deep sea*" lines, connecting French Polynesia with Europe in particular.
- *Feeder*" lines connecting French Polynesia with major ports in the region (*hubs*) and providing service with smaller vessels, usually after transshipment in New Zealand.

194. One of the main difficulties encountered is that companies cannot achieve economies of scale by serving French Polynesia, due to its low economic weight, the imbalance in flows (ships are forced to leave almost empty) and the impossibility for the port of Papeete to accommodate the largest ships. Even the largest container ships, those on the line from Europe, do not operate at full capacity because the port cannot accommodate them.

Table 18: Containerized physical goods flows to French Polynesia (2017)

	Thousands of tonnes	*%*
Europe	168	*38 %*
New Zealand	102	*23 %*
Asia	86	*19 %*
United States	59	*13 %*
Other	27	*6 %*
Total	**442**	***100 %***

Source: Syndicat des Agences maritimes au Long Cours data

i) Maritime services to French Polynesia

- *From Europe (38% of container traffic)*

195. Traffic from Europe accounts for the majority, in terms of value and containers. Yet this is a highly concentrated section. Indeed, since the withdrawal of Seatrade in early 2018[75] only two shipping lines are present, linked by a *vessel sharing agreement* (VSA)[76] : CMA-CGM (12 ships) and Marfret (1 ship). The 13 vessels on this route are medium-sized container ships (between 2,500 and 2,800 20-foot equivalent containers - hereinafter "TEU"). The line operates weekly from February to August and fortnightly from August to February. From Europe, it serves the US East Coast (via Savannah), French Polynesia, New Caledonia, New Zealand and Australia.

196. The main counterweight to CMA-CGM's very strong position is an alternative route, the so-called "long circuit" via the Suez Canal, Singapore and Auckland. This allows the use of very large cargo ships, which are much less costly, but it is less frequent, more irregular, longer (45 to 55 days at best, which is incompatible with the transport of fresh produce) and more restrictive (the two load breaks multiply the logistical risks). Some beverage importers say they have given up using it because transshipments can cause damage.

197. The only other ships on the line from Europe are specialized vessels, such as ro-ro ships, dedicated to transporting vehicles or very large goods (tippers, boats, tractors), but which do not load bulk cargo.

- *From the United States (13% of container traffic)*

198. From the U.S. East Coast, where frozen chicken in particular originates, lines from Europe stop at Savannah to load goods, before heading for French Polynesia.

199. Two companies, Hamburg-Sud and Hapag-Lloyd, share the route from the West Coast, where most of the foodstuffs, especially fruit and vegetables, originate, under a VSA agreement. Service is direct (10 days). A third company, Matson, has recently established itself on the line.

- *From Asia (20% of container traffic) and New Zealand (23% of container traffic)*

200. One company, NYK, operates a monthly direct route from Japan and Korea.

201. Many of the other ships stop over in New Zealand beforehand as part of the VSA and transship their goods (CMA-CGM or the Oceania VSA alliance between three major companies, including Hapag-Lloyd and Maersk). Feeders" then often take over. For example, a small

[75] Seatrade's opening of a container transport service from Europe in January 2017 led to the emergence of an offer competing with that of the incumbent operator. Seatrade succeeded in capturing market share, notably through very advantageous pricing practices for shippers, but after the failure of a VSA project in July 2017, it ceased operating the route in early 2018 and sold its six ships to CMA-CGM in early 2018.

[76] In theory, commercial autonomy and the ability to set prices are total in the case of line sharing, and *code-share* bookings between the two companies mean that fares can be negotiated with a single company, including for the use of the other company's vessels.

freighter, the Southern Trader operated by Pacific Direct Line (PDL), makes a round trip every 15 days between Auckland and Papeete. It has a capacity of 777 TEU, but usually leaves Papeete almost empty. Transit times are short, and transshipments in New Zealand are generally considered reliable.

202. Excluding containers, the bulk of traffic from New Zealand is cement (50-60% of the market), followed by sheet metal, steel, fresh produce, meat and sugar.

ii) High freight rates, especially from Europe

203. The main source of dissatisfaction for shippers concerns freight rates on the line from Europe. Operators point to the fact that the company refuses to negotiate freight rates, and regularly modifies its rates (the "freight rate"), which are unpredictable. All indicate that rates have risen since the departure of competitor Seatrade, and some also denounce a deterioration in service quality since that same date, with the imposition of an additional 15-day delay for order processing. Indeed, some importers prefer to negotiate a CIF rate directly, without dealing with the shipping lines.

204. Although Nouméa, for example, is further from Europe than Papeete, and further along the line, CMA-CGM's rates for dry (non-refrigerated) transport are 10% lower. There is no technical justification for this price difference, as this is a cost excluding specific charges (handling or shipping costs). What's more, while rates for New Caledonia fell sharply in 2018 (-10%), they rose for French Polynesia (+3%). For refrigerated transport, prices are identical, whereas from Le Havre, ships take 37 days to reach Nouméa compared with 29 for Papeete, which notably implies additional refrigeration costs. However, since 2018, the route to Nouméa has become relatively competitive, and is frequented by larger container ships.

Table 19: Public freight rates

	2017			**2018**			*2018/2017 trend (Papeete)*	*2018/2017 trend (Nouméa)*
	To Papeete	To Nouméa	*Gap Nouméa -Papeete*	To Papeete	To Nouméa	*Gap Nouméa -Papeete*		
20 ft. dry								
Freight	232 697	220 764	*-5,1%*	240 453	196 897	*-18,1%*	*3,3%*	*-10,8%*
Fuel adjustment	114 558	114 558	*0%*	124 940	124 940	*0%*	*9,1%*	*9,1%*
Other	64 558	64 558	*0%*	59 189	59 189	*0%*	*-8,3%*	*-8,3%*
Total	**411 814**	**399 881**	***-2,9%***	**424 582**	**381 026**	***-10,3%***	***3,1%***	***-4,7%***
20 feet refrigerated								
Freight	417 661	405 728	*-2,9%*	425 418	423 628	*-0,4%*	*1,9%*	*4,4%*
Fuel adjustment	131 742	131 742	*0%*	143 675	143 675	*0%*	*9,1%*	*9,1%*
Other	75 060	75 060	*0%*	69 570	69 570	*0%*	*-7,3%*	*-7,3%*
Total	**624 463**	**612 530**	***-1,9%***	**638 663**	**636 873**	***-0,3%***	***2,3%***	***4,0%***
40 ft. dry								
Freight	465 394	441 527	*-5,1%*	480 907	393 795	*-18,1%*	*3,3%*	*-10,8%*
Fuel adjustment	229 117	229 117	*0%*	249 881	249 881	*0%*	*9,1%*	*9,1%*
Other	101 074	101 074	*0%*	90 095	90 095	*0%*	*-10,9%*	*-10,9%*
Total	**795 584**	**771 718**	***-3,0%***	**820 883**	**733 771**	***-10,6%***	***3,2%***	***-4,9%***
40 feet refrigerated								
Freight	835 322	811 456	*-2,9%*	850 835	847 255	*-0,4%*	*1,9%*	*4,4%*
Fuel adjustment	263 484	263 484	*0%*	287 351	287 351	*0%*	*9,1%*	*9,1%*
Other	111 575	111 575	*0%*	100 477	100 477	*0%*	*-9,9%*	*-9,9%*
Total	**1 210 381**	**1 186 515**	***-2,0%***	**1 238 663**	**1 235 083**	***-0,3%***	***2,3%***	***4,1%***

Source: CMA-CGM data

205. According to industry players, only a major company would be in a position to establish a lasting presence on the Europe-French Polynesia route, and to strengthen price competition. Such a

company would need to have medium-sized cargo vessels in its fleet that are suitable for the port (which are becoming increasingly rare), as well as the financial resources to sustain a price war for an indefinite period. For its part, CMA-CGM considers that a reduction in prices would undermine the profitability of this route, and could *ultimately* lead to the termination of the direct link. In these circumstances, only the existence of the "long circuit" via the Suez Canal can exert pressure on prices, but this is not a credible alternative, at least not for fresh produce.

206. Freight costs are much lower from Asia, at around 200,000 F CFP for a 20-foot container. According to industry players, in addition to the difference in distance, this is due to an intense trade war between carriers, as well as strong pressure from forwarders to obtain the best rates.

207. On the other hand, transport from the United States is expensive, even if the new entrant would have offered lower prices at one time.

b) Frequent use of forwarding agents

208. The freight forwarder or commission agent, commissioned by a shipper (the consignor or consignee of a shipment), organizes transport, liaises between the various parties involved, and handles all related administrative operations, including customs formalities. Freight forwarders can have different statuses: that of agent if they are bound to their customer by an agency contract (which provides for an obligation of means), and that of commissionaire if they are bound to their customer by a commission contract (which provides for an obligation of result).

209. The use of forwarders or commission agents is in the majority, especially for imports from France, and is even compulsory above a certain import value. According to one shipping agent interviewed, the use of these intermediaries is a French specificity, and these functions no longer really exist elsewhere in the world, as it creates an additional intermediary to pay, which increases costs.

210. However, all the importers interviewed noted that freight forwarders were fiercely competitive with them, particularly on price, and that they were able to change forwarder if necessary, in order to use the most advantageous one. What's more, by allowing groupage among several consignees, forwarders are able to reduce routing costs.

211. This sector therefore appears to be competitive and able to offer the most competitive prices possible. No further investigations were carried out.

c) Port of Papeete costs

i) Excluding handling, the cost of a stopover in Papeete appears to be under control overall.

212. The port of Papeete is of major importance, given the weight of imports of everyday consumer goods, including sea freight. All sea freight destined for Polynesia transits through the Port of Papeete, where customs services are located, and which is the only port with the capacity to handle large vessels. The port handles 90% of the territory's trade by volume, and 80% by value.[77]

213. With regard to the quality of the infrastructure, our investigations have shown that it works relatively well. On the other hand, most of the players interviewed agree that the prices of the services offered, in terms of both transport and inbound logistics, are relatively high, and that the time it takes for goods to be immobilized after ship arrival (at least five days) is too long.

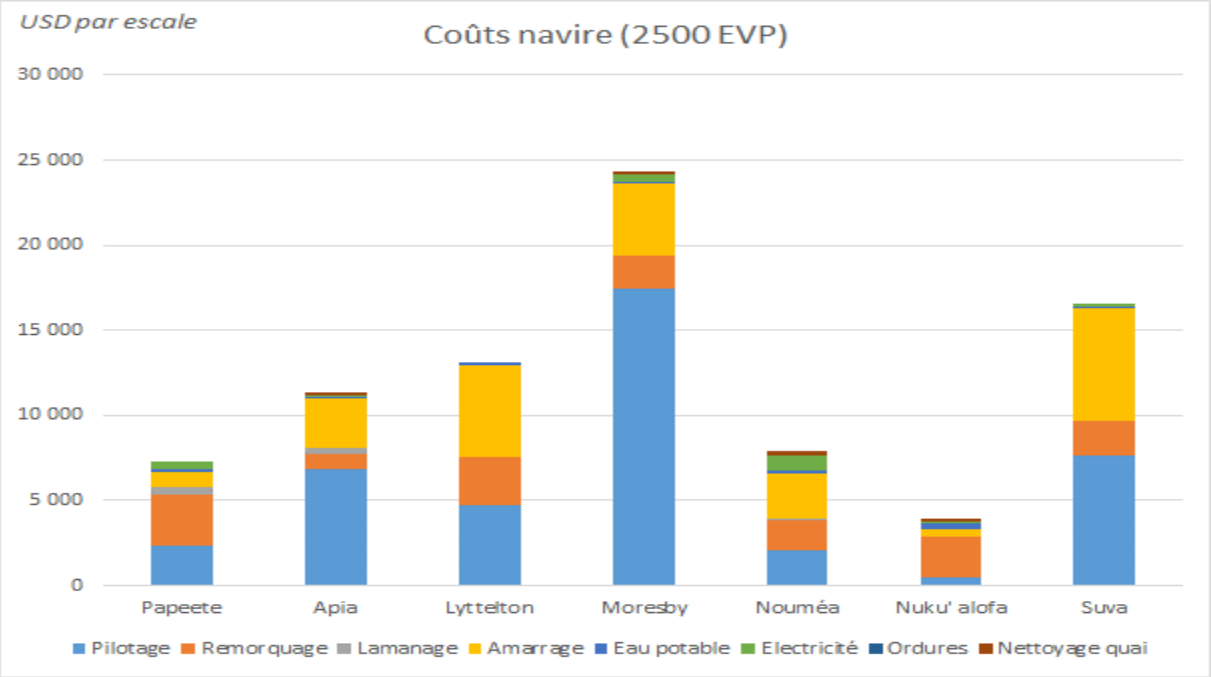
214. Port charges fall into 2 categories:

[77] Chambre territoriale des comptes de Polynésie française, Rapport d'observations définitives, "Port autonome de Papeete", September 3, 2018.

- Ship-related costs: pilotage, towing, mooring, mooring, services (water, electricity, garbage, refuelling);
- merchandise-related costs: quay dues, reefer intake, storage, stuffing/unstuffing, handling.

215. With regard to ship-related costs, the Autonomous Port of Papeete collects various fees for services provided to ships. The comparative studies requested show that by the Port that these costs are in line with other ports in the region, and even attractive for certain services such as piloting and mooring.[78]

Figure 17: Comparison of ship-related costs



Source: Systra study (2016)

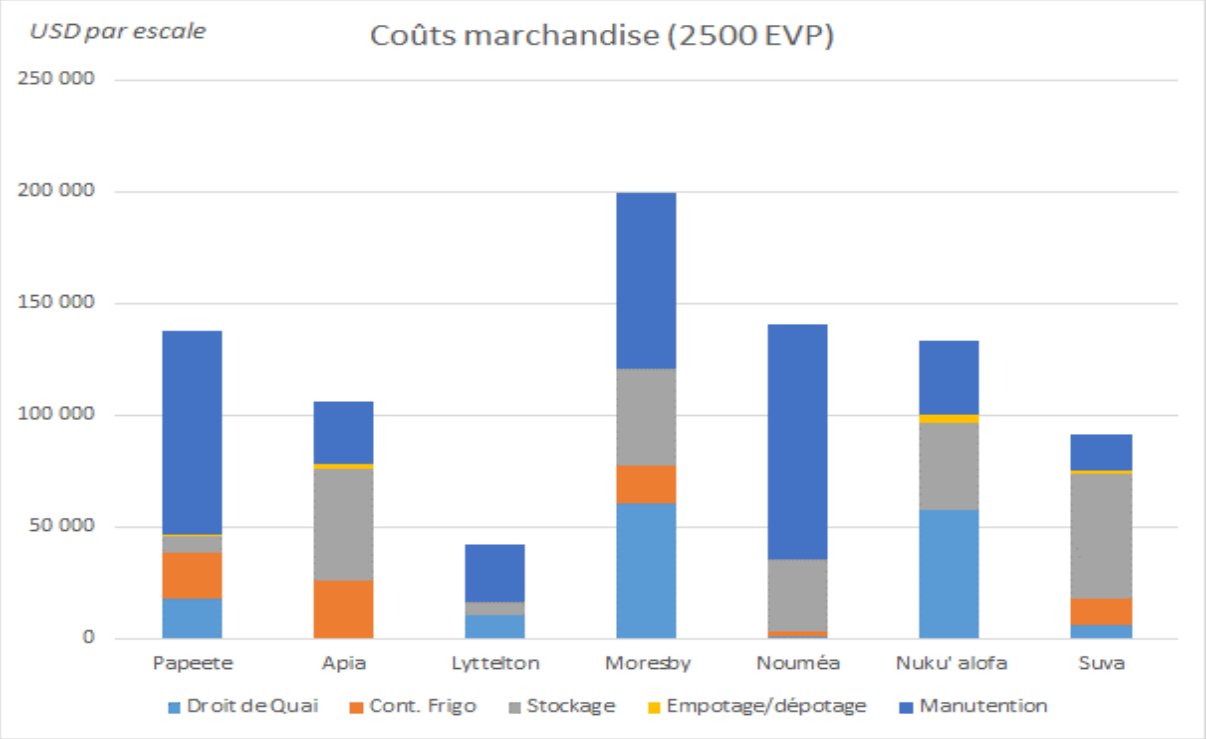
216. As far as merchandise costs are concerned, while Papeete's tariffs are in line with the (high) average for ports in the region, some of them appear too high to users, given the length of time it takes to take possession of imported products (at least five days after ships arrive).

217. Thus, apart from handling, which is not the direct responsibility of the Port and will be examined separately, the congestion charge, which applies when containers are not removed promptly after formalities, is poorly perceived. Indeed, it applies even when the shipper is unable to remove products, either in the event of damage to products, or in the case of a customs strike, or as in March 2019, when the Sofix customs computer system breaks down.

218. For all these reasons, certain innovations are eagerly awaited, such as the introduction of Fenix software by Customs (dematerialized declarations) and Port Community Management by the Port (online information system enabling goods to be tracked online).

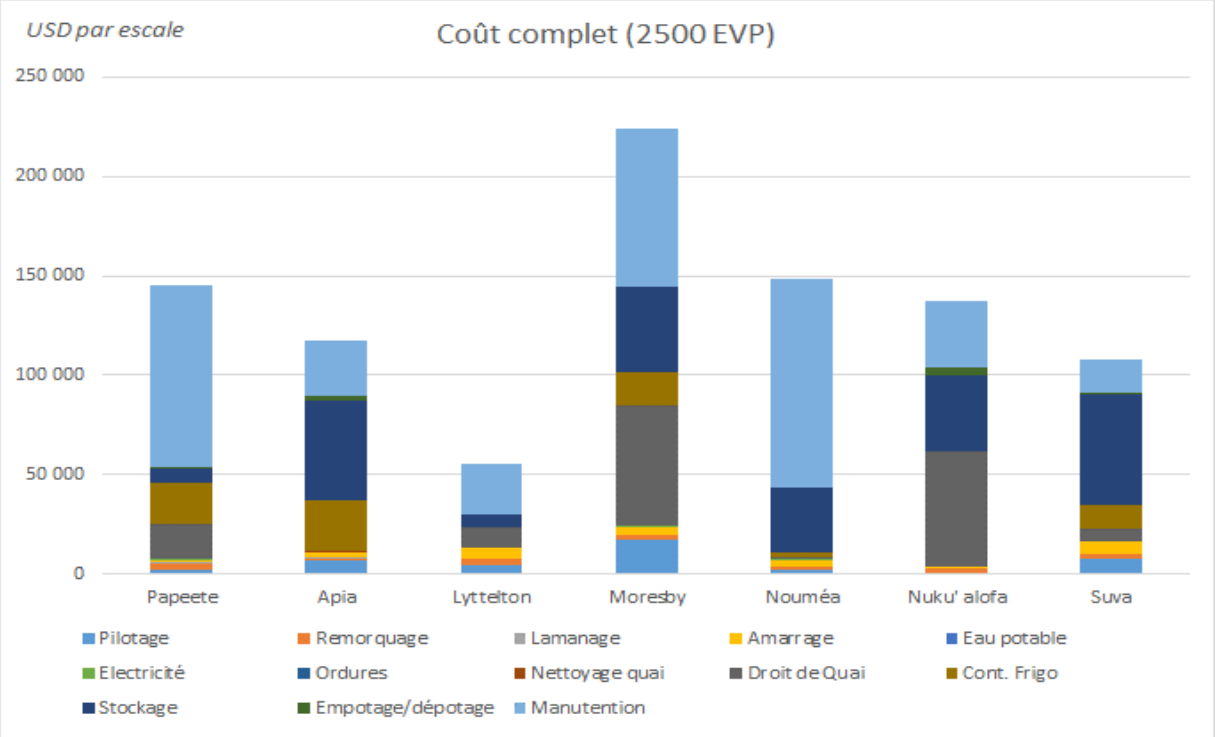
[78] See in particular the study commissioned by the Port from Systra firms "Mission comparant les coûts de passage portuaire dans les ports concurrents de la Polynésie française", May 2, 2016.

Figure 18: Comparison of merchandise-related costs



Source: Systra study (2016)

Figure 19: Comparison of the full cost of a stopover (excluding tolls)



Source: Systra study (2016)

ii) However, in addition to port dues, there is also a toll tax.

219. While service charges are paid by carriers, the toll tax is borne by importers and corresponds to 1.25% of the CIF value of imported goods.

220. It is collected by the Customs Department and paid back to the Port after deduction of a portion for collection costs (0.75% of the amounts collected). It represents the Port's main resource.

Although it is intended to be used entirely for port investments[79] 1.5 billion F CFP out of a total of 3.6 billion, with the remainder coming from services rendered to ships in port (1.1 billion) and land-use fees (1 billion). Only the positive balance of the operating budget, around 500 million F CFP per year, feeds the investment budget, and then only in part (for a positive savings balance of 7.5 billion over the period examined by the CTC, only 5 billion were invested).

221. This is a rare tax incentive. According to the CTC[80] it is the only French port to apply it, along with the Port of Nouméa. Although it finances over 40% of the port's operating revenues, the cost is passed on to Polynesian consumers.

222. However, the CTC report also shows that certain services rendered by the Port are not valued at their fair value. This is particularly true of land-use fees, which are charged at a much lower rate than the market price (i.e., that of contiguous land owned by the private sector and leased at much higher rates), and which also benefit from numerous discounts, as well as port services, for which rates are not set on the basis of cost accounting that would enable their cost to be determined.[81] Thus, despite the texts setting the minimum prices of fees for authorizations to temporarily occupy the public port domain.[82] In reality, a large proportion of these are granted at preferential rates, or even at zero, either by virtue of some fifty specific tariff deliberations, or as a result of the maintenance of historical rates, or due to an underestimation of the value of the buildings. Despite the existence of a building valuation commission[83] has not met since December 1er 2008. The CTC describes these practices as a *"historic counter policy"*, benefiting a handful of operators (7 hydrocarbon operators and 28 legal entities operating in a wide variety of fields).

223. These pricing practices are all the more problematic as they concern an extremely central and strategic location, where land is particularly scarce and expensive. They also create major inequalities between operators, with widely differing rates for the same property, and undermine the development potential of new players to the benefit of the incumbents, thus reinforcing the concentration of the economy.

224. *Ultimately*, therefore, it is the importers, and consequently the consumers, who finance the benefits enjoyed by the occupants and users of the port domain.

iii) Port capacity accounts for some of the extra costs

225. On the one hand, the port of Papeete is located in the path of Tahiti Faa'a international airport. However, regulations governing the air corridor impose maximum heights along its route, notably for the cranes on the long-distance quay, which may not exceed 40 to 60 m depending on their positioning.[84] On the other hand, global shipping is undergoing a significant trend towards concentration and the search for economies of scale, which involves increasing the size of ships. The Panama Canal has been enlarged since 2016, and is now able to accommodate the largest container ships, with capacities of 15,000 or 20,000 TEU. Shipowners are also grouping together in consortia on the main routes. As a result, ports are having to adapt, either by becoming global port *hubs*, or by choosing to be regional ports, away from the main lines and served by *feeders* from these *hubs*.

---

[79] This is also stated on the Port Autonome's own website: *"set by deliberation of the Assembly of French Polynesia, the toll tax is intended to finance investments in the construction of infrastructure and the renovation of equipment contributing to the improvement of port services"*. However, the deliberation creating this tax did not earmark it for any specific expenditure (deliberation no. 64-12 of January 20, 1964, creating and reorganizing duties and taxes for the benefit of the autonomous port of Papeete: *"Art. 3 - A toll tax on goods coming from outside the territory (...) is created for the benefit of the budget of the autonomous port of Papeete").*

[80] CTC report cited above (2018).

[81] Even though the accounting tools have been put in place by the Port.

[82] Deliberations no. 04-2002 and no. 34-2008 of January 29, 2002. .

[83] General Manager's decision no. 2002-144 of September 3, 2002.

[84] https://www.tahiti-infos.com/Grues-le-rappel-a-l-ordre-de-l-aviation-civile-aux-acconiers-de- Papeete_a138598.html

226. In this context, the port of Papeete is a small one. The depth of the Papeete channel is 11 meters, and the maximum draught allowed on the quay is 10.5 meters. However, the largest container ships have a full-load draught of over 15 meters. This means that only medium-sized container ships (4,000 to 5,000 containers), filled to around half-load (2,500 containers), can dock at Papeete. The fact that ships cannot be fully loaded necessarily has an impact on the price per container, and is reflected in freight rates. Firstly, because it limits the number of ships calling at Tahiti. Secondly, because the ships are not fully loaded, this limits their loading capacity, including to other destinations on the line (New Caledonia or Australia), which is reflected in the rates (higher price per container). This additional cost is compounded by the fact that very little loading is carried out in Papeete.

227. Several avenues for reflection were raised during the review of this opinion:

- Maintain the port as it is and make systematic use of the Auckland *hub*, which would supply French Polynesia via *feeders*.
- Deepen the Papeete pass and long-distance quay to 14.50 m, widen the pass and quay and, if necessary, extend the existing commercial terminal into the warehouse area and relocate the storage sheds.
- Move the port to the eastern zone, with access via the deeper Taunoa pass, to create a 25-hectare commercial terminal.

228. Those in favor of systematically using the Auckland *hub* argue that by strengthening this route, competition and economies of scale will be stimulated, leading to lower fares and faster turnarounds. However, the vast majority did not favour this scenario because :

- lower fares would only be possible if this segment were likely to interest the major airlines. This is unlikely, however, as the route is too short and *feeeders* almost always return empty. Fixed costs would therefore remain high, and the route unprofitable;
- This systematic transshipment would significantly lengthen supply lead times (by at least a fortnight), which would inevitably lead to a sharp drop in imports of fresh produce from Europe.

229. The scenario favored by industry players is to make Papeete a natural stop on the Pacific routes. However, without an increase in port capacity, there is a great risk that Papeete would soon be considered a second-rate port, off the main shipping lanes. Transshipment to Auckland would then become the norm.

d) Stevedoring, a regulated sector

230. Stevedoring means: i) loading and unloading operations, stowage, quaying or storage of goods arriving or departing on the quay in the long term, and ii) loading and unloading operations, stowage, quaying or storage of goods arriving or departing on the quay in the long term.
ii) recognition of goods and their storage at quayside or in sheds.

i) An activity reserved for three service providers, without competitive bidding

231. Stevedoring has been regulated since 1987[85] and the port handling market for goods entering and leaving the territory has since been reserved by law - without competition - to three companies: Sat Nui, Cowan and Compagnie tahitienne d'acconage (Cotada).[86] Cowan handles around 60% of stevedoring, while the other two companies handle around 20%. These three companies have

[85] Deliberations n°87-113 AT and n°87-114 AT of October 29, 1987. Certain provisions of the French Transport Code relating to port handling also apply in French Polynesia.

[86] Article 14 of deliberation no. 87-113 AT of October 29, 1987: *"As part of the measures to restructure port handling, private tooling authorizations with a public service obligation are automatically granted to stevedoring companies which, prior to publication of the present deliberation, were duly authorized by deliberation of the Board of Directors of the Autonomous Port of Papeete".*

their own staff and equipment (including six lifting cranes), and have been operating under a private tooling authorization agreement with a public service obligation since November 10, 1987.

232. This de jure access to the closed stevedoring market on the long-distance quayside has its origins in a major social conflict among dockworkers at the end of 1986, which resulted in riots.[87] The legal monopoly thus granted presupposed compliance with the conditions set out in a set of specifications which, given the context in which it was adopted, were neither very precise nor prescriptive in terms of quid pro quos.[88] In particular, no investment program was imposed on the beneficiaries of the stevedoring agreements.

233. The codification of existing legislation, undertaken in 2001[89] has had no practical impact on the competitive situation in this sector, which is regulated by the Port Autonome de Papeete, as manager of the public port service[90] and the Direction Générale of economic affairs, price regulation.[91] This agreement was renewed in 2007, without competitive bidding, for a further 20 years, until 2027.

ii) High regulated tariffs

234. As far as fares are concerned, the introduction of the 1987 reform, despite the presence of three companies, did not call into question the regulation of fares, the first documented traces of which date back to 1948[92] for local freight, and 1951[93] for international freight. The latest supporting text is decree no. 959 CM of September 14, 1995, last amended in March 2016.[94]

Table 20: Examples of stevedoring tariffs in the Port of Papeete

In F CFP	**Free products**	**PPN tenders**	**Other PPN**
20' container after auction	58 117	30 500	32 025
20' container, not tendered		40 000	42 000
20' refrigerated container		42 000	44 100
40' container after auction	116 236	61 000	64 050
40' container not tendered		80 000	84 000
40' refrigerated container		84 000	88 200
Batch on pallets (per T or m3)	4,041 for general merchandise 5,685 for frozen/refrigerated goods	1 700	1 785
Bulk (per T or m3)	3,156 for wood 2,709 for cement, etc.	2 050	2 155

Data source: Order no. 306 CM of March 23, 2016 on port handling fee tariffs.

235. Moreover, Papeete's tariffs appear to be very high compared to other ports with comparable activity. In the Pacific region, they are comparable only to those of New Caledonia (cf. tables § 218). Compared with tariffs in the French overseas departments and territories (DROM), they are

[87] Part of Papeete was set on fire, a state of emergency was declared and a curfew imposed after three strikes in December 1986 (three weeks long), February and September 1987. The two main reasons for the strikes were the local government's disruption of cement supply rules, and the "*failure to respect an agreement concerning the number of dockworkers required to work on the Mururoa site"* (reply from the Minister for French Overseas Departments and Territories to Senator MILLAUD on November 5, 1987).

[88] Set by decree no. 1061 CM of November 10, 1987, approving the standard specifications applicable to stevedoring companies operating in the autonomous port of Papeete, which are essentially limited to stating that beneficiaries must (art. 8): "*have at their disposal, in addition to general management and maintenance staff, a sufficient number of qualified personnel*" and (art. 10): "*justify the necessary equipment, in sufficient numbers and adapted to requirements*".

[89] By deliberation n°2001-5 APF of January 11, 2001 laying down provisions relating to the French Polynesia Seaports Code.

[90] Under the combined provisions of articles D.111-3 and A.121-2 of the French Polynesian Seaports Code.

[91] Under the combined provisions of article D.111-3-4 of the French Polynesian Seaports Code, article 5 of order no. 1036 CM of July 21, 2011 and order no. 959 CM of September 14, 1995.

[92] Order no. 1317 AE of October 15, 1948. The legal basis for these regulations was a decree of August 25, 1937 on *"the prevention and repression of any illegitimate rise in prices in the colonies*".

[93] Order no. 1635 AE of December 12, 1951.

[94] By-law n°306 CM of March 23, 2016.

much higher than those in Reunion, significantly higher than those in the West Indies, and close to those in Mayotte, all of which have been judged *"notoriously high"* by the competition authority in mainland France.[95] We may also be surprised by certain pricing methods, such as the absence of a degressive rate between a 20' and a 40' container, even though with the mechanization of handling, unloading the latter does not *a priori* entail work equivalent to that of two 20' containers. This invoicing is unprecedented in the sample examined. The rate is also more than double that of loading ports such as Le Havre or Auckland (which admittedly benefit from more modern equipment and economies of scale).

235.

Table 21: Comparison of stevedoring tariffs in different ports (in CFP francs)

2019 (unless otherwise stated)	**PF Papeete**	**NC Nouméa**	**Saint Denis *(2017)***	**Fort-de-France**	**Pointe-à-Pitre**	**Le Havre**	**Auckland (N-Z)**	**Suva (Fiji)**	**Nuualofa (Tonga)**	**Moresby (P-NG)**	**Port-Louis (Mauritius)**
20" sec	58 117	64 120	*40 692 (341 €)*	35 322 *(296 €)*	28 878 *(242 €)*	25 656 *(215 €)*	23 100 *(NZ$ 325)*	24 600 *(497FJD)*	8 370 *(179 T$)*	47 650 *(1,502 PGK)*	8 450 *(2,773 MRs)*
20" refrigerated	58 117	64 120	*40 692 (341 €)*	35 322 *(296 €)*	28 878 *(242 €)*	37 590 *(315 €)*	28 400 *($400 NZ)*	27 570 *(557FJD)*	8 370 *(179 T$)*	47 650 *(1,502 PGK)*	8 450 *(2,773 MRs)*
40" sec	116 236	112 899	*66 348 (556 €)*	48 806 *(409 €)*	44 272 *(371 €)*	25 656 *(215 €)*	40 800 *(NZ$575)*	49 200 *(994 FJD)*	16 740 *(358 T$)*	94 600 *(2,982 PGK)*	16 900 *(5,548 MRs)*
40" refrigerated	116 236	112 899	*66 348 (556 €)*	48 806 *(409 €)*	44 272 *(371 €)*	37 590 *(315 €)*	46 200 *(650 NZ $)*	55 140 *(1,114 FJD)*	16 740 *(358 T$)*	94 600 *(2,982 PGK)*	16 900 *(5,548 MRs)*

Source: simulation of tariffs on the CMA-CGM website and ADLC[96]

Table 22: Price differences for a dry 20-foot container compared with the port of Papeete

Papeete	**Nouméa**	***Saint Denis***	**Fort-de-France**	**Pointe-à-Pitre**	**Le Havre**	**Auckland**	**Suva**	**Nuualofa**	**Port Moresby**	**Port-Louis**
58 117	10,3%	*-30,0%*	-39,2%	-50,3%	-55,9%	-60,3%	-57,7%	-85,6%	-18,0%	-85,5%

Source: simulation of tariffs on the CMA-CGM website and ADLC

236. This high price level cannot be explained by the advantageous tariffs available for basic necessities, which could lead to a form of equalization. In fact, in 2016, only 3,958 twenty-foot-equivalent containers were involved, out of a total of 35,738 containers unloaded, i.e. 11% of traffic.

237. What's more, the Systra study shows that in most ports, handling fees are subject to commercial discounts of up to 25%, whereas this is not the case in Papeete.

iii) Related activities of stevedores

238. Stevedores also manage storage in bonded warehouses and customs clearance areas ("MAD"), although this activity is not included in the scope of their occupancy agreements with a public service obligation. This bonded warehouse activity is also regulated.[97]

239. Some of these stevedores also act as customs agents[98] on behalf of third parties, transporting

[95] See in particular ADLC notice no. 18-A-09 of October 3, 2018 concerning the competitive situation on the building materials markets in Mayotte and La Réunion and ADLC notice no. 19-A-12 of July 4, 2019 concerning the operation of competition in Overseas France (pages 74 to 78).
[96] ADLC notice no. 18-A-09 cited above.
[97] The activity is regulated by order no. 835 CM dated August 9, 1991, and the related rates were set by order no. 1248 CM dated December 28, 1993.
[98] Access to this profession is subject to approval by the Customs Department (cf. decree no. 1447 CM of November 1999), but rates have been free since 2014.

goods by land outside the bonded zone on Tahiti and Moorea [99]Rates for land freight transport on Tahiti and Moorea were regulated by Order no. 551 CM of May 23, 1996, but prices were freed up by Order no. 680 CM of April 24, 2014 repealing various texts relating to the regulation of prices and margins. or local representation of certain charterers or shipowners, in their capacity as a shipping agent.[100] Some also rent out their equipment and can be express mail freight operators.[101]

240. Finally, some have also developed a business importing building materials, particularly for products with few references but a lot of handling, such as cement, concrete, prefabricated products or prestressed beams.[102]

241. All these related activities, notably transport and wholesale, actually account for over 50% of their sales.

242. The stevedores therefore seem to have taken advantage of their strategic location to develop ancillary activities, for which they enjoy an advantage linked to their contractual situation with the port in the management of unloading. In particular, their revenues have enabled them to buy out companies in the road haulage and trading sectors for products they unload (such as building materials). These groups have a strong command of supplies and logistics.

iv) Ultimately, the organization appears to be less than optimal

243. The absence of competition in stevedoring is therefore almost total. There is no competition "on the market", since even if regulated prices are maximums, all operators are charged the same price.[103] Nor is there any competition "for the market", since incumbent service providers have been renewed without competition for over 30 years. At most, they can increase their market share by focusing on service quality. But the differences are small, as operators generally have privileged relationships with certain stevedores and do not change them frequently (except occasionally, depending on their workload).

244. According to statistics published by the Port, container operations in 2016 involved 73,706 TEUs, mainly for the unloading of full containers and the loading of empty containers, with a mass of 433,677 tonnes (i.e. an average mass of 11 tonnes per container). Although these levels represent a 7% year-on-year increase, they remain modest. Added to this are 360,920 tonnes of liquid bulk (mainly hydrocarbons), 48,372 tonnes of dry bulk (mainly construction materials, including 34,262 tonnes of cement and 4,993 tonnes of wood) and 7,656 tonnes of road vehicles, making a total of 850,624 tonnes.

245. However, in many ports of this size, there is only one stevedore, who - after tendering for the public service delegation - manages the terminal as a whole, and may subcontract certain services. A study by Sikajob on Mayotte, quoted by the Authority de la concurrence métropolitaine, states that *"it has been established that below the threshold of 100,000 TEU handled, only one stevedore can remain on the market*".[104] While such a threshold undoubtedly appears arbitrary, it is in any case surprising that the three stevedores each have their own infrastructure (six cranes in all). This equipment is rarely active at the same time, given the size of the quay, which cannot accommodate several large ships at the same time, and can therefore

[99] Rates for land freight transport on Tahiti and Moorea were regulated by Order no. 551 CM of May 23, 1996, but prices were freed up by Order no. 680 CM of April 24, 2014 repealing various texts relating to the regulation of prices and margins.

[100] Depending on the scope of the mandate given by the shipowner, the operator is either subject to the legal status of ship consignee under Law no. 69-8 of January 3, 1969, made locally applicable by Order no. 3932 AA of December 6, 1972, or to the legal status of commercial agent under Article L 134-1 of the French Commercial Code (extended in French Polynesia when codified by Order no. 2000-912 of September 18, 2000).

[101] This activity is regulated and subject to approval by the Council of Ministers (art. D.112-9 of the French Post and Telecommunications Code). Rates for these services are free.

[102] The Cowan Ltd group, for example, has two building materials banners: SOMAC and SOMAB.

[103] Industry players consider these rates to be fixed, with no room for negotiation. In fact, Systra's research indicates that, unlike other ports, stevedores in the Port of Papeete do not offer commercial discounts on their rates. Only certain ancillary services, such as unloading (container emptying), are subject to a degree of price competition between operators.

[104] Opinion no. 18-A-09 cited above.

appear oversized. According to some industry players, two cranes would be more than enough. But this necessarily has an impact on the cost of lifting, and will *ultimately* be reflected in the prices paid by consumers. In fact, stevedoring companies use their costs as a reason to ask for rate increases, whereas these costs could be reduced and management streamlined.

246. Without prejudging their optimum number, stevedores could at least be put out to tender on a regular basis, when the concession is renewed. Indeed, for the management of such an infrastructure, it is certainly possible to regulate the prices charged, [105]but only if potential managers are regularly invited to compete on the material and financial conditions of the delegation ("competition for the market"). This is the model used for urban transport, for example, when it is not managed by a public authority. In this case, staff are effectively protected from changes of delegatee by the fact that the new delegatee takes over the personnel. The monopoly or oligopoly is thus of limited duration, and is called into question each time the contract is renewed. The shorter the duration of the contract, the greater the competitive effectiveness of such an arrangement. Under this system, the Port would be the owner of equipment whose depreciation period exceeds the duration of the delegation (lifting equipment in particular), which would be made available to the delegatee in return for payment of a fee. The advantage of such an arrangement is that, rather than multiplying separate and redundant acquisitions, the equipment could be pooled by the operators, depending on ship arrivals. Such measures rationalize investment policy and promote economies of scale through the acquisition of better equipment, such as a semi-automatic gantry crane, which makes loading both safer and faster.

2. LOCAL INDUSTRY

a) Protecting local producers

247. The main aim of the various restrictions on imports is to correct the lack of competitiveness of local producers, due in particular to the small size of the market, and to promote their activity and employment. Given the absence of significant economies of scale and the high costs of local production (energy, communications, credit and land prices in particular), a large number of manufacturers have concluded that they would be unable to continue their activities without the various legal protections designed to insulate them from international competition. The region's isolation makes it unlikely that there will be a massive increase in exports, outside of niche markets such as pearls, noni[106] vanilla or monoi).

248. On the face of it, such protection is not intended to and should not have the effect of preventing the entry of local competitors, except when the domestic market is too small to allow the coexistence of several producers. This is the case with natural monopolies, but *a priori* they only concern a few sectors requiring very high initial investment costs, in particular the development of a network. However, even outside this extreme case, the narrowness of the market and the structural lack of export competitiveness (isolation) frequently lead to the creation of oligopolies or monopolies, when the production process requires the use of heavy equipment generating economies of scale (production units, for example) and the market is protected from imports. Under these conditions, there is a risk that, in the absence of competition from imports, local producers will have no incentive to increase productivity, reduce prices or innovate.

249. However, certain additional aid schemes can reinforce this risk and help to exclude potential competitors. This is particularly true of tax exemption schemes and foreign direct investment schemes.

[105] The challenge is to determine the right price level to encourage the service provider to improve its management.
[106] Also known as nono (Morinda Citrifolia), the name of the tree and its fruit.

i) Tax exemption schemes

250. Local producers can benefit from a number of tax exemptions, including customs exemption on raw materials and intermediate goods intended for processing[107] and specific exemptions for investments in certain sectors (tax reduction for indirect investments and tax exemption for direct investments). In addition, they benefit from a double tax exemption mechanism, as they can benefit from both Polynesian[108] and metropolitan France (Girardin law). Aimed at supporting investments that contribute to the country's economic and social development, this tax incentive, which applies to some twenty sectors, has enabled local manufacturers to invest in recent production tools, thereby limiting the competitive gap with imported products. According to the Cour des Comptes[109] *these local tax exemption schemes enable investors to benefit from assistance that can currently reach up to 42% of the total cost of the project. They can be combined with the national tax exemption scheme introduced under the Girardin Act of July 21, 2003, which can provide up to 31% of the cost of an investment. In both territories, the combination of these schemes has given rise to a sui generis "double tax exemption" system, which can currently finance up to 73% of the cost of a local operator's project.*

251. In 2017, 28 projects totaling F CFP 5 billion in investments were approved for a total tax credit amount of F CFP 2 billion. The main beneficiaries are the fishing and tourism sectors (particularly the hotel industry), but industry, particularly agri-food, also benefits.

252. These schemes undoubtedly meet a need: to enable small economies to benefit from financing capacities for their investment projects. However, the narrowness of the market weakens the profitability of capital and increases production costs by reducing the utilization rate of capacities that are sometimes oversized or needlessly duplicated.

253. The French Court of Auditors[110] pointed to windfall effects. With regard to financiers, 3% of taxpayers, notably banks, benefited from 60% of the tax credits. As for beneficiaries, numerous intra-group transactions enabled them to benefit from tax advantages even though they themselves financed the eligible investment. It also points to crowding-out effects in the hotel industry (70% of tax credits), where, with stable tourist numbers, new hotels have supplanted older ones (including some that had previously benefited from tax breaks), and luxury accommodation has supplanted lower-category hotels. In the commercial sector, a group benefited from a tax credit of over 1.7 billion F CFP for the construction of a new hypermarket in Tahiti, even though it already held a significant position in Tahiti, which was denounced at the time by the Te Tia Ara consumer protection association.[111]

254. From a competitive standpoint, there is a premium for larger companies, as evidenced by the existence of minimum investment thresholds.[112] No competitive analysis is carried out in the decision to grant this aid. In a structurally concentrated economy, this reinforces the market power of existing companies and limits the possibilities for new entrants to emerge on the markets concerned. This point is also made in a 2011 report by the Comité d'évaluation des dépenses fiscales et des niches sociales (committee for the evaluation of tax expenditures and social niches).[113] *The tax exemption measures play a real role in offsetting the additional costs*

[107] Deliberation 88-158 for all companies and 93-52 for companies with annual sales in excess of 50 million CFP francs (30 million CFP francs for companies located on the peninsula or other islands), and with local added value in excess of 50% of total operating expenses.
[108] Deliberation no. 95-55 AT of March 24, 1995, known as the "Flosse Deliberation", amended by Law no. 2009-7 of April 1, 2009, which overhauled the investment tax incentive scheme, broadening the eligible sectors and strengthening the obligations of project developers. The 2013 tax reform (loi de Pays n°2013-09 of March 20, 2013) reduced the rate of tax credits and led to a reduction in the granting of tax approvals (in return for lower corporate tax rates).
[109] Cour des Comptes, *Rapport public annuel 2012*, "Les dispositifs locaux de défiscalisation en Nouvelle- Calédonie et en Polynésie française".
[110] Cour des Comptes (2012), above-mentioned report.
[111] Press release of September 13, 2011 cited by F. Venayre in *AFD, working paper* n°121, March 2012, "Interventionnisme public et handicaps de compétitivité : analyse du cas polynésien".
[112] Article LP 916-1 of the French Tax Code, which sets it at 5 million CFP francs per investment program.
[113] *AFD, working paper* n°121, "Interventionnisme public et handicaps de compétitivité : le cas polynésien", March 2012, page 24.

and difficulties of access to credit in the French overseas departments. However, the lack of competitive intensity and contestability of the overseas departments' markets is further accentuated by defiscalization, which leads to an allocation of capital that favors established firms and can exacerbate rents and imbalances".

255. However, the weight of tax exemptions is not unrelated to that of high prices, as these measures are largely aimed at offsetting the weight of very high construction and operating costs in unprotected sectors, or even those penalized by import regulations, such as the tourist industry or export industries. In the hotel sector, for example, the double tax exemption system reduces the cost to investors of purchasing a hotel by 60%. Hotels buy their *inputs* from protected sectors (construction, food and beverages, etc.), and therefore at a much higher price than the world market price.

256. The distortion created by import restrictions thus necessitates compensatory tax expenditure in the form of exemptions or tax breaks.

ii) Restrictions on foreign direct investment (FDI)

257. Competition on the domestic market is also limited by restrictions on foreign investment. Indeed, while foreign investment in a territory is a sign of its attractiveness, French Polynesia has chosen, in addition to the general principle of freedom, to regulate it when it concerns sectors deemed to be "*the most vulnerable".*[114] Article 2 of deliberation no. 96-141 APF of November 21, 1996 regulating foreign investment in French Polynesia stipulates that any foreign investment operation is subject to prior authorization if it concerns one of the following sectors:

- acquisition of property or real estate rights ;
- investment in the fishing, aquaculture, mother-of-pearl or pearl sector;
- investment in the audiovisual and telecommunications sectors.

258. Outside these three sectors, foreign shareholdings are subject to disclosure requirements, "*within 3 months of acquisition*", if they exceed "*20% of the share capital or voting rights of listed companies or 33.33% of the share capital or voting rights of unlisted companies*".[115] In addition, a system of sanctions has been introduced in the event of non-compliance with regulations by investors. In such cases, the acts and transactions carried out by foreign investors are declared null and void, and the offender may be fined up to double "*the amount of the offence or attempted offence*".[116]

259. In addition, this regulation of foreign investment calls for a number of comments, notably because of its imprecision.

260. Although certain sectors were deemed particularly sensitive, the decision of November 21, 1996 makes no mention of any reasons of general interest that could justify a refusal of authorization. For example, a distinction could have been made between productive investments, to be encouraged, and purely speculative investments, to be discouraged. This lack of precision results in a particularly low level of legal certainty for prospective investors in French Polynesia.

261. Moreover, the deliberation does not define what a foreign investment is, so we don't know what it means by investment, nor what definition of foreignness is retained. This further weakens legal certainty for potential investors. In fact, a broad definition of the concept of investment has been adopted, encompassing acquisitions made by private individuals, and not just investments made by companies.[117] On the other hand, while national accounting standards use

[114] Report no. 155-96 of November 19, 1996 on a draft resolution to r e g u l a t e foreign investment in French Polynesia.
[115] Article 6 of deliberation n°96-141 APF.
[116] Articles 8 and 9 of the above-mentioned decision.
[117] Contrary, for example, to national regulations.

the threshold of 10% of capital to characterize direct foreign investment (hereinafter "FDI"), Polynesian regulations are more vague. No threshold is explicitly mentioned, and the threshold of 20% of capital above which all transactions must be declared does not correspond in the text to a definition of FDI.

262. With regard to the notion of foreignness, the deliberation does not specify whether the criterion of nationality or residence should be taken into consideration. Are companies established in France but controlled by foreign capital covered by the regulations? International foreign investment law uses the residence criterion to determine the foreignness of an economic player: it is the location of the company's head office that determines its nationality. In French Polynesia, the opposite choice seems to have been made, even if the regulations do not mention it. In fact, a circular from the President of French Polynesia, no. 58 du/PR of March 17, 1997, states that "*a French company is considered foreign-controlled if more than 20% of its listed capital (or 33.33% of its unlisted capital) is held by foreigners or by French companies that are themselves foreign-controlled*".[118] In practice, therefore, Polynesia seems to have opted for a definition of foreignness based on the criterion of nationality.

b) In the food industry in particular: highly concentrated production

263. Concentration is high in many sectors. The Authority's Merger Observatory, for example, examined the degree of concentration in four food industries (industrial pork butchers, fishmongers, beverage manufacturers and bakers). With the exception of bakers, the other three sectors show high levels of concentration:

- The industrial charcuterie sector is highly concentrated, with two main players.
- The number of wholesale fish traders has been falling for several years. There are fewer and fewer wholesalers, and the business is increasingly concentrated among integrated operators. This trend is reflected in increased concentration among the top three operators.
- In the beverage manufacturing sector, the top four companies hold 90.3% of the sector total. This phenomenon is also found on smaller markets, by beverage, with two players for spring water and a very large majority for beer or fruit juice.

264. In another example, a dairy company operates mainly in Tahiti. While it produces part of its milk from livestock located in Tahiti (on the Taravao plateau), a large part of its yoghurt production is based on imported milk powder.

265. Cumulative sales for the agri-food industry totaled 37.2 billion F CFP, with the top 15 companies accounting for 27.2 billion F CFP, or 73% of the total. If the bakery-pastry companies are removed from this overall sector, the new sector represents cumulative sales of 31.8 billion F CFP, with the top 15 companies accounting for 85.4%.

266. Concentration in the agri-food sector must be assessed in the light of the weakness or absence of external competition for local products, due to geographical remoteness and transport costs, as well as the fiscal and regulatory constraints described above. The industries concerned all benefit from strong protection against external competition in the form of fiscal or customs barriers designed to reduce the competitive deficit between local and imported products (TDL, tax on alcoholic beverages, exemptions from customs duties on raw materials, packaging or industrial tools, tax exemption for their investments, quantitative and qualitative restrictions on imports, etc.).

[118] Quoted by A. Troianiello *in* "Les investissements étrangers en Polynésie française" *Journal de droit comparé du Pacifique*, volume hors-série XVIII, Regards sur la fiscalité dans le Pacifique Sud, 2015.

Table 23: Degree of concentration in the industrial production of certain food products

Sector	Degree of competition in the market	HHI[119] estimated (2015)
Beverage production	**Highly concentrated**	7 360
of which beer	*a very strong player*	
of which spring water	*Duopoly*	
Canning	**Two monopolies**	
Delicatessen industrial	**Duopoly**	3 730
Dairy (excl. ice cream and cheese)	**a very strong player**	

Source: APC (for Herfindahl-Hirschman indices - HHI, 2017 concentration observatory report)

267. In addition to this high level of horizontal concentration, some of the region's largest companies are also involved:

- vertical integration, with groups involved in import, production and distribution;
- conglomerate diversification, with the presence of groups operating in a variety of sectors, beyond just the agri-food sector.

c) A market structure likely to impact both upstream and downstream markets

268. Long-lasting market protection is not likely to encourage companies to improve their performance. On the contrary, they are encouraged to devote part of their resources to seeking to perpetuate or even increase external isolation, for example by applying to submit new products to the TDL. Market structure reinforces these biases. The power of groups formed under the protection of the "protectionist umbrella[120] has facilitated the creation of strong positions, with the largest companies in a position to buy out new entrants.

269. However, when suppliers are highly concentrated, they are able to impose their prices and conditions on distributors in the absence of competition. Protectionism thus favors high margins for these companies.

270. Empirically, a concentrated market structure is also likely to encourage certain types of behaviour that are reprehensible under competition law, both in terms of cartels and abuses of dominant positions:

- implementation of a "price policy", with producers imposing recommended or minimum resale prices on distributors, often identical, which is reprehensible both on the basis of restrictive competition practices (article LP 420-1 of the French Commercial Code) and on the basis of the fight against anticompetitive practices (cartels and abuses of a dominant position);[121]

[119] The Herfindahl-Hirschman Index (HHI) is an index measuring market concentration.
[120] B. Poirine (2009), above.
[121] See in particular decision no. 07-D-50 of December 20, 2007 concerning practices in the toy distribution sector. In this case, the suppliers in question reached an agreement with all their distributors to ensure that their products were sold at the same price in all outlets. At the same time, they took steps to monitor the market. These vertical agreements were accompanied by "price policing" actions on their

- acquisition and retention of land, particularly for industrial use, to prevent the emergence of competing production;
- imposition of exclusive or at least priority sourcing from customers, in return for the benefit of discounts, or where applicable, in return for the financing of furniture or fittings;
- pressure exerted on distributors (presence on shelves, forced purchase of other products in the range, etc.);
- refusal to sell or provide services to competitors, or service rendered under degraded conditions.

d) An illustration of the effects of protection: the beer market

271. The case of beer was the most frequently cited regarding the effect of protectionist measures. From a health point of view, there is no justification for imposing higher taxes on imports.

272. According to the samples collected, taxes account for a very large proportion of the cost of beer, far higher than its purchase price (186% of its CIF cost and, ultimately, 46% of its selling price including VAT, of which 32% is import tax). However, local production escapes much of this taxation, in particular the TDL, which represents 82% of the purchase cost (CIF) of imported beer. It also benefits from other advantages (tax exemption for investments, reduced customs duties on hops, tax exemptions on raw materials and packaging, etc.).

Table 24: Breakdown of imported beer prices and tax burden

CAF price	17%
Warehouse delivered price	19%
Duties and taxes	32%
Of which :	
TDL	*15%*
Consumer rights	*6%*
Compensation tax on imported spirits	*3%*
TCP	*3%*
TSSC	*2%*
Consumption tax Beer	*1%*
Other taxes	*1%*
Sales margin	35%
Prices excl.	**86%**
VAT *(average)*	14%
Price incl. VAT	**100%**
Duties and taxes (excl. VAT) / CAF	186 %
Duties and taxes (excl. VAT) / ERP	169 %

Source : APC

273. This degree of protection severely limits imports. In 2017, for example, for a total market representing 7,060 M F CFP, imports represented only 343 M F CFP (of which 2/3 were duties and taxes), i.e. just 4.8% of the market.

part, aimed at "deviant" distributors, in order to raise the price of "problem" toys and obtain a rapid realignment.

3. IMPORTING

a) French Polynesia's preferred long-distance circuit

274. We usually distinguish three forms of organization for the supply of imported products:

- **The integrated circuit**: this is a product routing and distribution method in which a manufacturer (supplier) sets up a logistics structure on Polynesian territory. The supplier is responsible for transporting and handling products, and supplying sales outlets.
- **The short circuit (or "disintermediated" circuit**): this is a product routing mode in which the distributor is delivered by the manufacturer, if necessary via a central purchasing office, generally in mainland France, to its own storage platforms located either in mainland France (when it is also present there), or in Polynesia, or in both territories.
- **The long circuit:** this is a product routing and distribution method that involves using an intermediary, generally referred to as an "importer-wholesaler" or "brand agent". This intermediary handles certain logistical operations (storage, delivery, etc.), resells products purchased from manufacturers to distributors, and also takes charge of certain sales actions.

275. In French Polynesia, the integrated circuit exists (Nestlé or Colgate-Palmolive), but is rarely chosen due to the small size of the market, which discourages suppliers from setting up a permanent structure in French Polynesia. Even when this is the case, the producer can ensure the pricing policy and conduct commercial negotiations, but delegate the logistical aspects to a local importer.

276. The "long" or "intermediated" channel is predominant for food imports. Manufacturers tend to use importers/brand agents, who distribute a range of products and brands, thus pooling costs. In addition to importing, import-wholesalers can also store and transport products to their retail customers on the islands. In addition, import-wholesalers can offer brand agent services: they represent their suppliers' brands locally, and advertise and promote them in French Polynesia to both retail customers and end consumers. They often act within the framework of exclusive brand distribution contracts, or de facto exclusivities. This model is very common for food products and DPH (drugstore-parfumery-hygiene) products, but also for other consumer goods (DIY, medicines, leisure articles and automobiles).

277. The "short" circuit is also developing. Some food retailers purchase their food products directly from companies outside French Polynesia. This is particularly the case for chain stores, which have access to these organizations' central purchasing units and platforms for their supplies, particularly for private label products (hereafter
THIS IS CALLED "PRIVATE LABEL".) However, apart from private labels, which are less important in French Polynesia than in mainland France, distributors still use local importers, particularly those with exclusive import rights for certain brands.

278. Thus, importers-wholesalers continue to play a pivotal role in supplying small shops, hotels and archipelagos, for whom their mastery of logistics chains remains an asset, and remain present with mass retailers (sometimes in the form of subsidiaries of these same groups).

b) A dynamic import sector with high margins

279. Overall, the financial situation of importers-wholesalers is rather favorable and dynamic. Margin rates, in particular, are tending to improve and are now slightly higher than in mainland France. However, the lack of available statistics makes it difficult to carry out a precise analysis, which would make it possible to distinguish between trends in wholesaling companies in the food sector, which are *a priori* the most affected by trends in mass retailing, and trends in import-wholesale companies in the food sector, which are a *priori the* most affected by trends in mass

retailing[122] and to distinguish between wholesalers linked to supermarket groups and others.

Table 25: Margin rates in the wholesale sector

Wholesale trade, non-automotive (NAF 46)	Polynesia 2012			Polynesia 2017			Metropole 2017		
	Q1	Median	Q3	Q1	Median	Q3	Q1	Median	Q3
Sample	178			211			28 757		
Sales margin (Sales margin/Goods sales)	19,1%	**30,2%**	41,9%	19,2%	**31,3%**	45,3%	18,3%	**28,3%**	38,0%
Margin rate (EBITDA/added value)	-1,4%	**17,0%**	36,1%	11,5%	**25,6%**	41,4%	8,9%	**21,9%**	37,3%
Overall gross surplus rate (2017) (Net income before tax/Sales)	0,2%	**3,6%**	6,3%	2,1%	**4,5%**	8,8%	1,8%	**4,1%**	7,7%

Source: IEOM data

c) A relatively unconcentrated wholesale sector for food products, more concentrated for other products

280. Within the framework of the Merger Observatory, the Authority has concluded that concentration is relatively low in the food wholesale sector, but higher in other sectors. For example, there are only two wholesale importers in tobacco and three in pharmaceuticals, while the three biggest companies in food wholesaling only account for a third of sales.

Table 26: Degree of concentration in the wholesale trade

Sector	Activity code	Degree of concentration	Year	HHI[123] estimated
Mainly food wholesalers	4633Z Wholesale of dairy products, eggs, edible oils and fats +4634Z Wholesale of beverages +4636Z Wholesale of sugar, chocolate and confectionery +4638B Wholesale of food products Miscellaneous food +4639B Non-specialized food wholesalers	Low	***2015***	655-665
Tobacco wholesale	4635Z Wholesale (business-to-business) of tobacco products	Very high	***2015***	4820-4850
Trade in Wholesale drug	4646Z Wholesale (business-to-business) of pharmaceutical products	Very high	***2015***	2875-2900
Wholesale of fuels	4671Z Wholesale (business-to-business) of fuels and related products	Very high	***2015***	2971

Source: APC, Merger Observatory Report (2017)

d) Import exclusivities do not benefit consumers

281. The long circuit implies a double margin. However, this does not mean that an alternative system would be less costly. Importers buy products wholesale from outside the country, for which they benefit from discounts, and can also charter whole containers, which are much cheaper than groupage shipments. They then make these products available to retail outlets, allowing them to benefit from their logistics chain or payment facilities. According to the players we met, the use of importers greatly facilitates logistics (regular and sustainable supply, product information in a context of plethoric supply).

[122] In particular, since 2012, public sector data from the IEOM no longer distinguishes between sub-segments within the sector.
[123] The Herfindahl-Hirschman Index (HHI) is an index measuring market concentration.

282. The challenge is to ensure that these economies of scale also benefit consumers, which presupposes that intermediaries' margins are limited by effective competition between them. However, this is only imperfectly the case, as despite apparent competition, at least in the food sector (large number of importers), they often enjoy *de jure* or *de facto* import exclusivity (given the savings in transaction costs that using a single importer represents for manufacturers). According to some importers, since the introduction of the Lurel law for the French overseas departments and the Polynesian Competition Code[124] de facto exclusivities have tended to replace de jure exclusivities. In the food sector in particular, they can take the form of suppliers choosing "preferred distributors", who alone benefit from access to their entire range, promotional budgets or product training. The effects of such conditions are clearly similar to import exclusivities, in that they complicate and make more costly the access of other importers to the same products.

283. As a result of exclusivity, there is little or no intra-brand competition. While inter-brand competition remains in theory, it is reduced in proportion to the notoriety of the brand covered by the exclusivity, which reduces substitutability with other brands, as each distributor wants to have it on its shelves. The result is that importers are free to set their own prices, which may explain why they are able to maintain high profitability in a competitive environment.

284. Territorial or supply exclusivity is not in itself a reprehensible practice. However, they can be penalized if they have the object or effect of distorting or restricting competition, without these negative effects being offset by greater economic efficiency. However, an exclusive supply agreement gives the holder a monopoly on certain brands, whose reputation can give him real market power. This can lead to certain pressures (obligation to buy the whole range, even when only the flagship product is really wanted, recommended minimum prices, refusal to sell, etc.).

285. Several distributors have testified that exclusivity is a cost factor, and that they could pay lower prices (sometimes triple) by importing directly from their central purchasing office, from a brand agent in mainland France, or from the manufacturer. They see themselves as captives of the local importer, who therefore has considerable latitude in setting prices.

286. Exclusive import rights can also be held by an integrated group, active in both import and distribution. In this case, the wholesaler becomes a supplier to its own competitors. The temptation could then be great to use exclusive import agreements to slow down or even halt deliveries to competitors, or to charge them higher prices.

287. These additional costs are then passed on directly to the consumer in the form of higher sales prices.

4. FOOD RETAILING

a) A high concentration of superstores and the maintenance of a fabric of small shops

288. Statistical data from the ISPF[125] distinguish several categories of convenience goods retail outlets: hypermarkets (predominantly food stores with a sales area of over 2,500 m²), supermarkets (between 400 and 2,500 m²) and small convenience stores (less than 400 m²), within which are distinguished small self-service outlets offering a narrow range of everyday products (with a sales area of less than 120 m²) and mini-markets offering a slightly wider range of products (with a sales area of between 120 and 400 m²).[126] We therefore need to take a global

[124] Which, before the measure was withdrawn in 2018, prohibited such agreements unless they could be shown to be in the consumer's interest.

[125] Decree no. 2007-1888 of December 26, 2007 approving the French activity and product nomenclatures used by the Institut de la Statistique de Polynésie française (ISPF): http://www.ispf.pf/bases/Repertoires/Entreprises/Nomenclatures.aspx.

[126] However, surface area thresholds must be used with care, and can be adapted to each individual case, as stores whose surface area is

approach, examining all general food stores, but also distinguishing between the categories of hypermarkets and supermarkets, which are differentiated by their size, accessibility, the nature of the service provided and the breadth of the product ranges on offer.

289. In addition to this typology, there is also a typology by brand, which is important in this sector. In fact :

- On the upstream markets, a large proportion of the chains' supplies are pooled, and their market share therefore conditions the terms they obtain, both from their own central purchasing bodies and from importers or local producers;
- On downstream markets, a certain number of elements of the competitive analysis can also be examined in a wider context than the local level - by catchment area - because the competitive relationships between retail chains are not limited to competition at local level, but actually cover a wider geographical dimension, i.e. regional or national (in this case, Polynesian).[127] (in this case, Polynesia). In fact, most chains decide centrally on the structure of their assortment, which is therefore often identical on the various local markets, at least as far as the basic assortment is concerned. On the other hand, superstore chains tend to run advertising campaigns, promotions or new product launches (in cooperation with their suppliers) at the level of the territory as a whole, rather than at local level. Finally, customer loyalty policies (through loyalty cards, for example) are implemented at territorial level. However, in French Polynesia, at least for the LS Proxi, U, Carrefour, Easy Market, Champion and Happy Market banners partnering Intermarché, the structure of the assortment, advertising campaigns, promotional actions or new product launches and customer loyalty policies are decided on a broader basis than a single store.

290. These two markets, upstream and downstream, are linked. The European Commission, for example, has stated that "as retailers' purchase volumes are linked to their market shares, their downstream position plays a decisive role in their position in relation to producers. As a corollary, purchasing power is a reference criterion in the negotiation of purchasing conditions granted to distributors by their suppliers. These purchasing conditions are themselves a factor in determining consumer resale prices, and therefore exert a significant influence on competition between distributors.[128]

i) A high degree of concentration in the retail sector

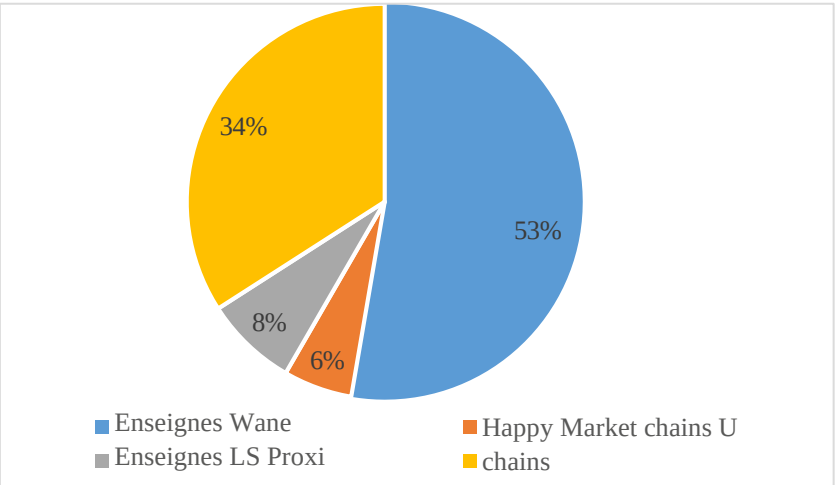
291. Figures for the food retail sector in French Polynesia show a high level of concentration. The Wane group, comprising the Carrefour, Champion and Easy Market banners, occupies a dominant position, ahead of the U, LS Proxi and Happy Market banners partnering Intermarché. In French Polynesia as a whole, the Wane group holds more than 50% of the sales area in the "chain" supermarket and hypermarket segment.

close to, below or above a threshold may find themselves in direct competition with stores in another category.

[127] See in particular European Commission decisions no. IV/M.1221 of February 3, 1999, no. COMP/M.1684 of January 25, 2000 and no. COMP/M.4096 Carrefour/Hyparlo of May 4, 2006.

[128] Commission decision no. IV/M.1086 of March 10, 1998 Promodès/S21/Gruppo Gs. This analysis was taken up by a decision of the metropolitan authority n°14-DCC-173 of November 21, 2014 relating to the acquisition of exclusive control of Dia France SAS by Carrefour France SAS.

Figure 20: Market share of chain stores



Source : APC

292. Similarly, the 2017 report by the Authority's Merger Observatory, relying on an analysis in terms of sales, notes that:

- the share of hypermarkets and supermarkets in the sector increased in 2015, representing 63.7% of sales (for only 10% of companies in the sector). This is a long-term trend: between 2000 and 2012, the number of supermarkets rose from 22 to 31, while the number of mini-markets fell from 59 to 41.
- In 2015, the leading group in French Polynesia maintained its share of overall sales in food retailing (over 42%), as well as in the supermarket and hypermarket segment, where it accounts for just over 2/3 of sales.

Table 27: Concentration indicators for food retailing (by group)

Sector	Activity code	Degree of concentration	Year	HHI[129] estimated
Mainly retail food	4711D Supermarkets +4711F Hypermarkets + 4711B General food stores + 4711C Superstores	High	2015	1875-1925

Source: APC, Merger Observatory Report (2017)

293. However, when buyers have strong purchasing power, they are in a position to exert pressure on suppliers in order to obtain advantages from them. If, as is the case in mainland France, this power can lead them to obtain attractive commercial conditions, these advantages will only be passed on to consumers in the event of downstream competition.[130] Otherwise, these gains are captured by the retailer.

294. As in the production sector, horizontal concentration in the food retailing sector is combined with vertical integration, notably by the main group, which is increasingly active in production (agricultural products, charcuterie, etc.), in importing through its central purchasing unit, and also as a forwarding agent and brand importer through specific food import companies. This situation leads it to sell products, both food and non-food, to its main competitors in the retail distribution market.

ii) The survival of convenience stores

[129] The Herfindahl-Hirschman Index (HHI) is an index measuring market concentration.
[130] On this point, see the European Commission's decision of February 3, 1999, Case n° IV/M.1221-Rewe Meinl, § 71.

295. The structure of the predominantly food market in French Polynesia is also marked by the presence of numerous small convenience stores and mini-markets. This strong presence can be explained by practical and historical (cultural) reasons. They are very present in communes and neighborhoods where households are not very mobile. In fact, 23% of Polynesian households do not have a vehicle, and only 28% have two.[131] In densely populated areas, they are a supply solution for a population that is not very mobile and not inclined to make long journeys to make purchases. They are also present in less densely populated areas, where the population is too small to allow for the establishment of large stores. In this case, they serve restricted catchment areas, in valleys or near easements and districts off the main roads, as well as a large part of the less populated islands.

296. A recent study by the ISPF[132] study shows that while, on average, consumers spend 47% of their grocery bill in food-dominant supermarkets, poorer households and those living outside Tahiti's urban area make more frequent use of small shops. Thus, while 60% of food expenditure takes place in supermarkets in Tahiti's urban area, this proportion falls to 47% in its rural area, and between 1% and 18% in the other islands. And while households in the highest-income decile spend 60% of their food in supermarkets, this figure is much lower in rural areas. The proportion falls to 28% for the lowest income decile (who use supermarkets and self-service food outlets for 52% of their food purchases, and itinerant sales outlets for 8%).

297. These small establishments of less than 400 m² still account for 87% of Tahiti's total of more than 280 predominantly food stores, even though they represent only 33% of the retail space operated. Convenience stores, with a floor area of less than 120 m², account for 59% of the total, but only 12% of the sales area. This means that more than one in two food stores in Tahiti is a small convenience store, even though the total sales area of these 174 stores is equal to that of the island's two largest hypermarkets (9,700 m² combined).

298. The continued existence of convenience stores can also be explained by the practice of merchant credit, which does not exist in supermarkets, and by the fact that the price differential between these stores and supermarkets is relatively small, despite a smaller offer, a low volume effect and the absence of joint sourcing. There are various reasons for this. First and foremost, they are due to the strong presence in small stores of PPN and PGC products, with regulated margins, as well as products with a strong reputation and high demand (beers, soft drinks), for which consumers are particularly price-conscious. However, some players consider that the reasons for this price proximity are to be found directly in the structure of the market and the lack of competition between the major chains, which benefit from a volume effect in their supplies but do not pass on their economies of scale in the form of lower prices and, on the contrary, take advantage of them to increase their margins.

iii) The new regulations on commercial urban planning seem likely to prevent further concentration.

299. The control of retail space, as implemented since 2016, appears to protect consumer interests. Indeed, while in absolute terms, the intervention of a prior authorization granted by the Polynesian Competition Authority, including for the creation of relatively small surfaces (from 300 m²), may appear as a barrier to the establishment of new businesses (Malthusianism), this is not the case for two reasons:

- the Authority's examination deadlines are short because they are time-constrained. Operations are therefore not unnecessarily delayed;
- the control carried out by the Authority, under the terms of article LP 320-3 of the French Competition Code, is essentially a "competition test" (verifying that the transaction neither creates nor strengthens a dominant position). The main criterion is therefore to ensure that

[131] ISPF, *Points forts*, n°01, "L'usage de la voiture pèse dans le budget des familles", January 2019.
[132] ISPF, *Points forts*, n°03, "Quels lieux d'achat pour quels produits?", March 2019.

an operator whose position would present anticompetitive risks does not emerge in a given local geographic area.

300. So, even if some well-established players are arguing in favor of easing constraints, notably by raising the floor area subject to authorization (from 300 m² to 800 or 1,000 m², for example), this does not seem relevant given the already highly concentrated structure of the superstore market.

b) The potential effects of such a concentration

301. The inflationary effect of the concentrated market structure would be increased by cultural habits specific to French Polynesia. In fact, two characteristics of independent distributors were noted during the investigation: on the one hand, a desire for independence, which greatly reduces their ability to group together, for example to pool orders and obtain better prices, and, secondly, a lack of volume culture. Some are said to calculate their profitability by looking only at the margin rate, not the total margin, which encourages them to sell few products, but with high margins based on the consumer's "willingness to pay". This line of reasoning is so deeply rooted that even banks look solely at the mark-up when they are asked to grant a loan, for example for the creation, extension or renovation of a store, without taking into account the additional margin volume that an extension, for example, would allow.

302. To illustrate this reasoning, some importers have pointed out that when they reduce the margin on certain products, in order to allow retailers to increase sales volumes, the latter do not in fact increase the volume of their orders, but increase their margin per product, even though faced with this drop in purchasing costs, it would have been in their interest to sell more products by lowering their prices. Another example: in Tahiti, private labels would be sold at the same price as brand-name products, rather than 20% or 30% cheaper, and "giraffe products" *("20% more product"* or *"3 for the price of 2"*) are rarely used. This price-maximizing behavior is said to be common to all small shops, but also to hoteliers and restaurateurs.

303. In economic terms, this behavior has a certain rationality. In a tight market, the return on investment from a price war in terms of volumes (gains in market share) is by nature low.

304. The difficulty is that the oligopolistic structure of the market prevents competition from playing its role. The equilibrium price is *ultimately* determined by the willingness of affluent consumers to pay, leading to imitation and a vicious circle: the leading group aligns itself with traditionally high price levels, and obtains a high margin thanks to its reduced acquisition costs and economies of scale; the other chains declare themselves unable to wage a price war in the face of the leading group's financial capacity, and align themselves with these high prices, which guarantee them a high unit margin. The result is a spiral of high prices, with prices ultimately very similar between different store formats, aligned on the most expensive. The only possible distinctions between retailers are in terms of assortment, not price.

305. It is therefore the consumer surplus that is captured by distributors, to the benefit of an equilibrium characterized by high prices and a relatively stable competitive situation.

5. MARKET STRUCTURE SUMMARY

306. With the exception of a few sectors, the intensity of competition in French Polynesia is therefore relatively low overall.

307. Upstream, routing, which is a critical element given the degree of openness of the economy, is penalized by the weight of one operator on the main shipping line (from Europe) and the high cost of stevedoring, which benefits from both regulated tariffs and the presence of a protected oligopoly (therefore unchallengeable by a third party).

308. As far as local production is concerned, manufacturers take advantage of this isolation to negotiate greater protection with public authorities, in the name of employment (even if the real effects are debatable). Thus protected, they have little incentive to reduce their prices or better satisfy consumers.

309. At the intermediate importer-wholesaler stage, a certain degree of competition remains, at least in the food sector, for a number of low value-added products. However, two phenomena limit the scope of this apparent competition and explain, at least in part, the relatively high margins earned by these operators. Firstly, the de jure or de facto brand exclusivity enjoyed by these importers, and secondly, the growing power of importers directly linked to a distribution group, which reinforces a certain vertical integration and the market power of the latter.

310. Downstream, the high level of concentration in the retail sector and the high barriers to entry are not conducive to dynamic competition. The behavior of the main retail groups and high prices confirm this state of affairs. No distributor wishing to break with tradition and adopt innovative practices is in a position to emerge.

311. The presence of integrated groups and cross-shareholdings, as well as the captive nature of island customers, further blunt competition and make it difficult to challenge these dominant positions.

Table 28: Degree of competition at different stages of the import and distribution circuit in French Polynesia

Players	Degree of competition in the market
Exporters (suppliers)	**Competitive**, except for certain well-known brands that appear on the market. in the
Shipping companies	**Quasi-monopoly** on the main line (France - United States - French Polynesia). Difficult to challenge, except when the Port is reorganized to promote economies of scale. **Competition** on other lines
Forwarding agents	**Competitive**
Stevedoring	**Undisputed oligopoly** (3 players and regulated prices)
Local manufacturers	Competitive in sectors open to imports (rare) **Monopolies or oligopolies in sectors protected from imports** (e.g. beer, fruit and vegetables, spring water, charcuterie, dairy products, etc.), which are difficult to challenge given the size of the market and the investment required.
Importers	Food **Competitive between brands,** but often **monopolistic on one brand** (through import exclusivities). Exclusivity can only be challenged by the leading distributor, given its market power.
Distributors	Food **Highly concentrated**, especially in certain segments (supermarkets) and sectors (islands, Papeete-Faaa-Punaauia sector). Difficult to contest given the financial clout needed to acquire land and wage a "price war".

312. The market is therefore highly concentrated. Yet the question of market structure is essential. On the one hand, increased competition would reduce costs and redistribute part of the margins to consumers. On the other hand, the effectiveness of other measures, particularly regulatory ones, is also conditional on a more competitive market structure. To take one example, if price regulation were lifted, the positive effects to be expected would presuppose that the various chains would engage in genuine price competition for these products. On the other hand, it would be pointless if they followed the behavior of the leading player and maintained high prices. It therefore seems necessary to work towards removing barriers to entry and encouraging the development of new players.

III. POSSIBLE ACTIONS

313. It is clear from the above that, while certain structural and exogenous elements are factors in additional costs, the numerous market protections and the margins of importers and distributors are far more crucial than transport costs in explaining price levels, particularly for food.

314. It is not the role of the Authority to arbitrate, on behalf of the government, between the various general interest objectives of regulations (local employment, access to goods for the most modest consumers, health concerns, etc.), which may in some cases appear contradictory. On the other hand, it is part of its remit to assess the competitive effectiveness of some of these measures, and hence their impact on price levels. All restrictions on entry to the local market, *especially* non-tariff barriers (quotas or bans), have proved to be particularly harmful, and have led to high prices. The negative effects of these measures are accentuated in a context of structurally concentrated markets, and high production costs in the absence of sufficient domestic demand.

315. Competition and employment are not mutually exclusive objectives. Competition stimulates productivity, which in turn feeds investment and jobs. What's more, the purchasing power freed up by lower prices can be spent by consumers to satisfy hitherto unsatisfied needs by acquiring other goods or services with little competition from foreign producers. Indeed, it is unanimously recognized that the significant increase in the number of tourists visiting Polynesia in recent months is linked to the expansion of supply and the lower cost of international air transport, and therefore to increased competition.[133] In a 2008 report, the IEOM, working with aggregated data, highlighted the negative price elasticity of tourism demand in French Polynesia. For example, between 1995 and 1998, a 13% drop in prices coexisted with a 12% rise in visitor numbers (price elasticity of tourism demand - 0.92), while between 2002 and 2004, a 6% drop in prices was accompanied by a 10% rise in visitor numbers, corresponding to a price elasticity of demand of - 1.67. According to the IEOM, this price sensitivity is all the greater the further the outbound market is from the Polynesian territory. Typically, Metropolitan France and more generally Europe (Italy in particular), which are among French Polynesia's leading tourist suppliers, are markets where demand is fairly sensitive to price variations in the tourism industry, including air transport. Depending on the scenario adopted, an overall price reduction of 10% could lead to an increase in demand of between 9% and 17%. Obviously, the niche positioning of the Polynesian tourism industry limits the expected price effect, but there is still room for maneuver to send positive signals to foreign consumers, potential tourists.

316. Competition is therefore capable of driving down prices, including for local entrepreneurs, and boosting their competitiveness, without the need to multiply compensatory measures that are costly for the public purse (tax exemptions or defiscalisation). Reducing import regulations would also stop distorting players' economic incentives, and refocus the economy where it has comparative advantages.

317. Apart from regulation, the other main issue is market structure and the culture of competition.

318. The mission entrusted to Francis Amand on competition in the French overseas territories does not concern the Polynesian territory,[134] but nevertheless testifies to the importance and relevance of this subject, in the context of the fight against the high cost of living in territories with similar geographical constraints. At a hearing held on April 11, 2019 by the French National Assembly's Delegation for Overseas France, Mr. Amand made the following

[133] See, for example, the minutes of the Council of Ministers meeting of April 30, 2019: *"The current momentum, due in particular to the expanded international air service offering, should enable us to stay on course and exceed 220,000 tourists over the full year".*

[134] Against the backdrop of the "yellow vests" movement on Reunion Island, on December 19, 2018, the central government appointed an interministerial delegate for competition in overseas France, Mr. Francis Amand, with the main mission of *"reinforcing price transparency in overseas France by combating unfair commercial practices as well as cartels and abuses of dominant positions".*

observation: *"There is not a strong culture of competition in Overseas France (...) Competition between importers is weak due to the continued existence of import exclusivities. (...) Overseas France is not seen as a market to be conquered by many importers, as it is a small market and price differentiation is therefore limited. (...) Competition between importers and local operators is poor, due to a dock dues tax*[135] *which has strayed from its original objective. Competition between local operators is moderately developed and sometimes only apparent (...) Operators do not take the step of putting their suppliers in competition. There are models of friendly negotiation for historical reasons, which undermine the effectiveness of competition in these sectors. Subsidies and dock dues keep operators in this kind of comfort, which only leads them to seek efficiency [in their sourcing]".* While the situation in each territory is specific, and even though prices remain lower in the DROMs than in French Polynesia, the findings of this opinion are ultimately very similar to those of the inter-ministerial delegate, and place the competitive structure of markets at the heart of the matter.

319. We will look in turn at proposed reforms to import regulations (A), those likely to remove barriers to entry and stimulate competition on the markets (B) and finally those likely to increase the culture of competition in French Polynesia (C).

A. ASSESSING AND REFORMING IMPORT REGULATIONS

320. French Polynesia has introduced an extensive arsenal of market protection measures, both tariff and quantitative. The aim of these measures was to correct the structural competitiveness deficit of domestic industrial and agricultural production, in order to re-establish a certain balance with foreign suppliers (*level playing field*) and develop local employment.

321. However, the foregoing developments have highlighted the ineffective nature of these protections, from an economic and competitive point of view. They encourage high prices, to the detriment of consumers, tend to freeze established market positions or even encourage the concentration of economic operators, and reduce the overall well-being of the Polynesian economy, without any proven effect on employment.

322. Reform would therefore seem both feasible and desirable, in order to move towards a more competitive model, likely to instill dynamism in markets and reallocate resources towards the most efficient uses. Stimulated, competition encourages more efficient productivity gains, which fuel investment and employment. In addition, by exerting downward pressure on prices, it fosters gains in purchasing power for Polynesian households, which in turn increases the quantities purchased, thereby expanding outlets for local businesses.

1. REMOVE NON-TARIFF BARRIERS TO IMPORTS AND REVISE THE AGRICULTURAL QUOTA POLICY

323. The welfare losses generated by non-tariff barriers are greater than those of tariff barriers. Indeed, while their effects on consumer welfare are the same, there is also a loss of welfare for the country, due to the lack of associated tax revenue. As a result, they make it impossible, for example, to take advantage of these revenues to implement an economic or social policy designed to promote access to everyday consumer goods for the most disadvantaged, and instead make it necessary to find other sources of revenue.

324. A first step would be to transform quantitative barriers into tariff barriers. This would reduce the loss of welfare for the Polynesian economy, while avoiding paradoxical shortages.

[135] The similarities between *octroi de mer* and TDL were highlighted above.

325. It's a political choice, then, which is posed in the following terms: should we prefer to protect a few, possibly inefficient, producers, exposing ourselves to the risk of shortages and maintaining high prices to the detriment of consumers, or opt to open up markets, and thus reallocate resources towards more efficient jobs? The second option is actually the most effective in the medium term, particularly in terms of employment and economic activity, as it allows new activities to emerge.

326. This reform could primarily concern agricultural products, which are subject to major import restrictions, without any proven effectiveness in terms of covering needs through local production, prices, product quality or quantities consumed, despite the fact that fruit and vegetable consumption is supposed to be a public health priority.

327. The most effective solution would appear to be to abolish quotas altogether, replacing them where necessary with conditional public subsidies to farmers financed by import duties, in order to give local production a competitive edge. In addition to reducing prices and increasing quantities consumed, it would provide a competitive stimulus to boost production quality and efficiency, possibly through the pooling of production or marketing resources.

328. If, however, the government intends to maintain agricultural quotas, several measures could make the current system more effective:

- Revise the method for determining consumption forecasts, in a dynamic way, to allow for an increase in quantities consumed, with a view to both economics (to the benefit of producers) and public health.
- Rigorous control of production forecasts and their implementation, including *a posteriori*, to base quotas on the quantities actually produced.
- Closer monitoring of the cost price of agricultural produce, for example through the implementation of a price reference system, in order to move away from a high price equilibrium, to the shared benefit of producers and retailers, but to the detriment of consumers and importers, as well as the efficiency of the Polynesian economy.
- Introduce qualitative factors (product maturity, organic production) and not just quantitative ones to determine quotas.
- Clarify and regularly revise the quota allocation key between importer-wholesalers, making it dependent on the share of local production sold by each importer-wholesaler, possibly combined with other agricultural policy objectives (organic farming etc.), in order to maintain or develop an incentive to favor local production.
- Introduce flexibility into the import system, allowing all quotas to be used up.

329. Consideration could also be given to sanitary and technical regulations (list of countries whose agricultural imports are restricted; adaptation of building regulations to the local situation). Local grading of building materials, particularly wood, would have the advantage of facilitating supply and developing a local industry, drawing on the positive aspects of New Caledonia's experience with Caribbean pine.

Proposals :

In general :

1. Eliminate non-tariff barriers to imports (quotas, bans, etc.), replacing them where necessary with tariff barriers.
2. Conduct a standard-by-standard review of applicable regulations on building materials, construction rules and health regulations, to assess whether each should be maintained in full, adapted or abolished to take account of the specific features of French Polynesia.

In agriculture :

3. Primarily, abolish import quotas, if necessary by replacing them with conditional public subsidies for farmers.
4. In the alternative :
   - Revise the method for determining consumption forecasts, in a dynamic way, to allow for an increase in quantities consumed.
   - Rigorously monitor production forecasts and their actual achievement.
   - Closer monitoring of the cost price of agricultural production, for example through the introduction of a price reference system.
   - Introduce qualitative factors (product maturity, organic production) and not just quantitative ones to determine quotas.
   - Clarify and regularly revise the quota allocation key between importers and wholesalers, making it dependent on the share of local production sold by each importer, possibly combined with other agricultural policy objectives (organic farming, etc.), in order to maintain an incentive to favor local production.
   - Introduce flexibility into the import system, allowing all quotas to be used up.

2. REDUCE TARIFFS, ESPECIALLY FOR NEIGHBOURING COUNTRIES

330. A reduction in tariff protection in French Polynesia could have an immediate impact on domestic prices, as well as on trade volumes.

331. By lowering duties and taxes through the signing of free trade agreements with partner countries, which enable derogation from the most-favored-nation clause, inflows and, to a lesser extent, outflows could increase in French Polynesia.

332. While not an objective in itself, increasing trade flows can be a source of revenue for French Polynesia (via exports, as well as thanks to the surplus of taxes and duties collected on entry)[136]. Increased trade flows can also broaden the range of products on offer to the Polynesian consumer, contributing to a qualitative improvement in the well-being of the domestic economy. Finally, it will also have an effect on prices, both imported and domestic, through an alignment mechanism.[137] This reduction can be achieved via two channels: lower duties and taxes on entry into French Polynesia, and the volume effect. *Ultimately*, *the* overall well-being of the Polynesian economy would be enhanced.

333. A number of factors need to be taken into account to ensure that this tariff reduction delivers the highest possible welfare gains for the Polynesian economy.

334. **Geography is a** decisive factor. The aim here is to take full advantage of what economists call the gravity equation, in order to create a virtuous dynamic of regional trade. The gravity equation defines the most natural, and therefore *ultimately* most efficient, international trade structure for a given country. Two elements are of prime importance: the economic size of the country and its partners (rich or poor country)[138] and the geographical distance between the country and its trading partners. In other words, to regain economic efficiency, French Polynesia would have a real interest in orienting its foreign trade more towards the emitting markets closest to it geographically, especially if, like it, these are rich countries. Consequently, a reduction in DTI targeted at products from Pacific zone markets (USA, New Zealand, Australia, even China), with which Polynesia already trades substantially, would maximize the induced welfare gain. In particular, lowering customs duties to the level applied to European products would enable Polynesia to leverage its comparative geographic advantage on the international stage. According to CEPII estimates,[139] an average 5-point reduction in tariffs could increase flows with these countries by around 25%. The effect on prices would therefore be positive for Polynesian consumers, with a concomitant reduction in freight costs, not to mention a widening of the range of products products that would then be offered. All the more so since, with a currency pegged to a strong currency (the euro), Polynesia could benefit from a relative advantage in importing its products primarily from the $-Yuan zone, a monetary zone that corresponds almost entirely to the aforementioned Pacific Rim countries zone,[140] a currency zone which corresponds almost entirely to the Pacific Rim countries mentioned above.

335. Such an alignment with the duties applicable to Community imports would appear to be compatible with European law. Indeed, while the Treaty on the Functioning of the European Union (TFEU) establishes the principle of the prohibition of customs duties at the entry of each Member State on imports of goods originating in the OCTs (article 200-1), the reciprocal is not

[136] This is the volume effect. Lowering the level of tariff protection generates additional revenue, as the volume of new trade more than compensates for the lower level of taxation.

[137] If a local company continues to sell its products at the original price (i.e. before the ITD reduction), it will lose part of its demand, which will be diverted to equivalent imported products, which will benefit from the ITD reduction. In addition, the price of intermediate consumption can be reduced.

[138] A country's economic wealth is measured by its GDP in purchasing power parity. Despite its unfavorable purchasing power parity, Polynesia is one of the rich countries according to the World Bank (high-income group, with a GDP/capita of over 11906 US$/capita).

[139] Estimate made by CEPII in February 2016, as part of the discussion on the Transpacific Partnership (TPP).

[140] Since its introduction as an exchange currency on January 1er 2002, and after a period of relative weakness, the € has been structurally a strong currency, particularly against the $. Since 2003, the € has never fallen below $1.

true and products of Community origin may be subject to customs duties levied by the OCTs, *"which meet the needs of their development and industrialization or which, being of a fiscal nature, are intended to support their budgets"* (article 200-3 of the TFEU). The limits are set by Article 40 of the Council Decision of November 27, 2001 on the association of the overseas countries and territories with the European Community (Overseas Association Decision), amended by Decision no. 2007/249/EC of March 19, 2007, which states that *"(...) the trade arrangements applied to the Community by the OCT may not give rise to any discrimination between Member States, nor be less favorable than most-favored-nation treatment"*. The only limit is therefore not to set rates for third parties that are more advantageous than those granted to the European Union.

336. **The** second element to be taken into account in any ITD reform is **the price elasticity of demand.** It measures the sensitivity of demand for a product to variations in its price, including VAT.[141] The objective of maximizing the country's tax revenues and that of maximizing economic efficiency can be found in a common principle, that of lowering ITDs for products for which the price elasticity of demand is strongly negative. Indeed, by heavily taxing this type of product, Polynesia sharply reduces consumption and only slightly increases tax revenues. The significant loss of consumer welfare (low consumption, and products consumed at high prices) is therefore not offset by the increase in tax revenues. A substantial reduction in ITDs for this type of product would therefore have a double positive effect on the Polynesian economy. On the one hand, domestic consumption would rise sharply. On the other hand, despite the lower level of taxation, tax revenues would increase thanks to the induced volume effect.

337. On the other hand, with a view to maximizing the country's tax revenues, it would be possible to maintain a relatively high tax rate for products whose demand is not very price-elastic, with the exception of basic necessities benefiting from an exemption.

338. Goods with non-standard characteristics for which demand is positively price-elastic could also be taxed substantially[142] could also be taxed substantially.[143] These include typically Veblen-type goods, known as conspicuous consumption goods.[144] The non-standard feature of these goods of social distinction is that their consumption reacts positively to price increases. In this case, price plays the role of a strong identity marker, so that a price cut that would make the product more readily available would discourage consumption by the more affluent categories. Thus, an increase in price *via* taxation can lead to an increase in consumption of these products by the more affluent categories, as well as optimized tax collection. To be fully effective, such a measure should focus on products that are difficult for private individuals to import: luxury cars, luxury boats, jet-skis, etc.

339. High taxation could also be maintained for addictive goods and other goods over whose consumption the Country may wish to exercise control (guardianship goods, tobacco, alcohol, sugary drinks, fatty and sugary products presenting public health risks). However, this should only be done on condition that substitutable local products are taxed in the same way. Otherwise, economic distortions will arise and, in terms of health, the stated objective will not be achieved.

340. The allocation of the sums collected here is a matter of political choice, but it would be entirely possible to reconcile economic rationality, *via* taxation, with social justice, by redistributing the sums in a logic of equity.

---

[141] Thus, a -1 price elasticity of demand means that demand for the product falls by 1% when the price of that product rises by 1%. Generally speaking, all normal goods have a negative price elasticity of demand: demand for them falls when their price rises.

[142] Their consumption therefore varies in the same direction as their price. If the price increases, so does their consumption.

[143] Without going as far as the threshold where the increase in taxation becomes marginally negative and beyond which an increase in taxation reduces tax revenues, the increase in the tax rate being more than offset by the reduction in the tax base due to a decrease in the quantities consumed (Laffer principle).

[144] Thorstein Veblen, *Theory of the Leisure Class*, 1899, for an analysis of the distinctive consumption practices of certain social categories.

Proposals :

5. If necessary, reduce customs duties from neighboring countries under free-trade agreements, by aligning them with the rates applicable to products originating in the European Union.
6. Favoring the taxation of specific goods (e.g. tutelary, ostentatious, contrary to health policy).
7. Eliminate distortions between local production and imports when it comes to taxes designed to protect public health.

3. REFORMING THE LOCAL DEVELOPMENT TAX

341. Several reports have been devoted to the issue of TDL. The Bolliet report[145] recommended "*loosening the protectionist constraint*", notably through the gradual abolition (over three years) of the TDL, partly offset by the possible introduction of a time-limited development tax (TDDL) to protect the installation of strategic industries. The Roger de Villers study (2009) was less clear-cut, concluding that a thorough reform of the system was needed. However, it has been challenged, notably for its inverted argumentation architecture.[146] This goes against the teachings of the entire economic literature on taxation, which considers that small countries experience a loss of net welfare following the introduction of taxes on trade, production or imports. The chosen approach, which consists of comparing the gains and losses incurred by local producers as a result of potential variations in TDL levels, with the gains and losses incurred by the local consumer (using the price effect), is a static and sector-based argument, which does not take into account the existence of other production sectors to which consumption could shift, and which could therefore benefit from potential TDL reductions. In other words, no mention is made of dynamic efficiency gains, except to consider them purely hypothetical.

342. In addition, many Polynesian economic players, including importers and retailers, regularly criticize this system.

343. Taking note of these debates, the Vice President of the Government announced during the Council of Ministers of November 20, 2018, the launch of a project to reform the local development tax (TDL).[147] In particular, it provides for an update of the products protected by the TDL so that this tax no longer applies to goods that are not or no longer produced locally. It also provides for simplification, reducing the number of separate tariff headings from eight to four.[148]

344. As part of this project, the Authority is in a position to make a number of proposals.

345. Total abolition of the TDL would represent a reduction in direct tax revenues of F CFP 1.84 billion. However, this is an apparent cost. In fact, the loss of budget revenues will be offset in the medium term, both by lower prices for imported and domestic products, and by dynamic efficiency gains, made possible by a more effective allocation of resources, with resources being used for more productive uses, for which French Polynesia has a comparative advantage or

[145] IGF, IGA, IGAS, *Mission d'assistance à la Polynésie française*, September 2010.

[146] See. B. Poirine, Tahiti, une économie sous serre, Paris, L'Harmattan, 2011, p.43 This 113-page study, commissioned by the local Ministry of the Economy and Finance, states the conclusion of its work on page 39, before it has even begun to study the figures..." and p. 55 "Analyses that take stock in terms of value added are doubly flawed: firstly, because the change in value added is calculated at the local price and not the international price as here (Pm and Pt), and secondly, because they neglect the effect on welfare of forgoing consumption of the good after the tax, represented by the triangle c (CED): consumers between E and D are in effect obliged to forgo buying the good. Their welfare loss is not compensated by the government's tax revenue".

[147] https://www.presidence.pf/conseil_ministres/conseil-des-ministres-du-20-novembre-2018/.

[148] https://www.tntv.pf/Video-La-taxe-de-developpement-local-bientot-reformee_a28864.html.

minimal comparative disadvantage (services, tourism industry).[149]

346. If the decision is nevertheless made to maintain the TDL, it would seem necessary *at the very least* to reduce its imperfections to ensure that it does not lead to the creation of windfall effects and rents. Regular evaluation would enable us to correct certain negative effects: we would need to clean up the list of products subject to the system, and exclude products not produced locally; we would also need to quantify the effects of protection on employment and innovation. It would also be essential to dissociate the protection of local production from the taxation of goods whose consumption the country wishes to control, often for public health reasons. For example, the disappearance of the TDL on certain key goods (alcohol, including beer, tobacco, beverages and sweetened products, including fruit juices and soft drinks) would mean that local production would not be legitimately protected, in line with the objective of controlling consumption of these products. On the other hand, this would not rule out the creation of new taxes on these products (whether imported or locally produced), or the overhaul - at higher levels - of the current tax architecture, which would enable the country to achieve its dual objective (controlling consumption and optimizing tax revenues), while compensating for the disappearance of the TDL on these products. Lastly, the TDL should be targeted at products whose production has real value. These are undoubtedly the sectors that provide the most jobs. In particular, products for which local companies only carry out the final processing of imported products should not benefit.

347. This implies an individualized diagnosis of the benefits of protection, carried out for each company concerned, at the time the protection measure is granted, and regularly updated for each company, in order to avoid the perpetuation of rents.

Proposals :

Principal function :

8. Eliminate the permanent nature of the TDL and replace it with temporary protection for infant industries only, for example for a non-renewable period of 3 to 5 years.

9. Consider more permanent protection for strategic products only, or in the event of the creation of a new sector.

10. Abolish the TDL on goods whose consumption we want to limit (sugary and alcoholic products), even if it means replacing it with other taxes, to avoid giving these goods an advantage over local production.

Alternatively, in the event of a permanent TDL :

11. Introduce compensatory measures for all protection measures, whether temporary or not, based on verifiable criteria linked to performance, innovation, the creation or maintenance of supply chains, the safeguarding or creation of jobs, or the incorporation of local inputs into the production process.

12. Determine a minimum "transformation rate" or "local added value" for protected products, as local production cannot simply consist of the assembly or repackaging of imported products, with no real added value.

13. Simplify and lower rates to levels that remain compatible with the competitive operation of markets (for example, three levels of protection: a standard rate of 30%; an exceptional rate of 50%; and a reduced rate of 15%).

14. Make the tariff headings on which the tax is based more precise, so as to be able to determine the products taxed more accurately and avoid taxing products not manufactured locally.

[149] Economic theory teaches us that import taxation is a source of dry loss of global well-being for small countries. The disappearance of taxation, even in the absence of a compensatory mechanism, *ultimately* leads to a rise in overall well-being, at least in the medium term, once the transitory effects have passed.

4. SUBSTITUTE ALTERNATIVE SUPPORT MECHANISMS FOR IMPORT AND PRICE REGULATION

a) Reforming price regulation

348. While noting the reform undertaken in February 2019 to restrict the list of PPNs and the press release from the President of French Polynesia dated April 3, 2019, which affirms the government's wish to maintain a regulatory system for essential products, the Authority reaffirms that a reform of price regulation would make it possible to both reduce public spending, guarantee the accessibility of the most essential products to low-income households, and gain purchasing power on free products for all households, by offering greater flexibility to retailers in putting together their range, and limiting margin carryovers on free products.

349. The operators interviewed during the course of the investigation essentially argued in favor of refocusing the PPN scheme, on the one hand on a list of a few products that are really necessary, and on the other hand on a list of products that are really necessary, on the other hand, in the most remote areas of Tahiti, where customers are captive to a very small number of distributors. Such measures would have the advantage of limiting expenditure and windfall effects for wealthy households, by refocusing the scheme on priority groups. Another option would be to replace the scheme with direct aid to low-income households, to help them purchase certain essential goods.

350. The Authority also points out that the principle of setting margins by reference to exposed costs plus a reasonable return on capital, known as the "cost-plus" method, is often contested on theoretical grounds, as it does not encourage players to improve their management and reduce production costs. It is therefore preferable to set a ceiling price (known as a "price cap"), adjustable over time, which provides a greater incentive to reduce costs.

351. Another frequently discussed topic is food labeling, which importers say is a real burden for them, and has an effect on prices, particularly for PPNs. While regulations requiring labelling in French or Tahitian are essential to inform and protect consumer health[150] one avenue could be explored to neutralize this cost for PPN products. In fact, if an imported product already has a French-language label, the cost of this is incorporated into the purchase price and therefore into the warehouse-delivered price (PRE), which serves as the basis for applying the maximum authorized margin. It is therefore neutral for the importer. On the other hand, if the label has to be affixed by the importer himself, the cost of labelling (essentially personnel costs) is deducted from a margin that is already regulated. Provided this is done transparently, to avoid misuse of the system and the charging of excessive labelling costs, these expenses could be integrated into the cost price of the PPNs (the warehouse-delivered price), so that they no longer weigh on the importers' margins.

b) Alternative, conditional aid for producers

352. There is a specific issue at stake in agriculture, where the interests of producers, distributors and consumers are often artificially opposed. The fruit producers' union and the market gardeners' union of French Polynesia have voiced their reservations about the reform of staple products[151] which saw a large proportion of fruit and vegetables removed from the list of NPPs and FMCGs, which included a 35% margin, on the grounds that this would reduce the share of the retail selling price received by the producer (currently 60% for FMCGs, based on a 35% margin and

[150] On March 28, 2000 and June 26, 2002, the Administrative Court of French Polynesia (judgement no. 99-37 of March 28, 2000), confirmed by the Paris Administrative Court of Appeal (judgement no. 00PA02401 of June 26, 2002), annulled the provisions of deliberation no. 98-149 APF of November 19, 1998, which authorized posting in English only.
[151] By-law no. 225 CM of February 15, 2019.

a 5% VAT rate) and could lead to higher prices.[152] However, there is nothing to suggest that farmers' incomes will be lower in absolute terms as a result of price liberalization, nor that the margin captured by retailers will be higher. Indeed, it would appear that producers have solutions other than price regulation to protect themselves from pressure from retailers, either through litigation (contesting abuses of dominant position or illicit practices), or through mutualization (in the form of cooperatives, for example). In fact, combined with a reduction in import restrictions, price freedom could, on the contrary, act as a competitive spur and prevent opportunistic calculations by distributors, who today give preference to products that are more expensive to purchase, in order to secure a higher margin (as in the case of Marquesas lemons, which are preferred to Tahitian lemons for this reason). A system of direct aid, to protect producers and consumers, could also be envisaged with the tax gains linked to the abolition of certain PPNs. This would reduce distortions in price formation mechanisms and windfall effects. However, it will be necessary to ensure that distributors have no incentive to pass on the amount of these subsidies in their prices, which presupposes a certain degree of competition between them.

353. Some local producers have also mentioned the effect of the patente, whose proportional duties are based on the value of the gross fixed assets of productive goods, and which therefore penalizes local production and does not take into account the obsolescence of goods (as would taking into account their net book value). Correcting this tax could compensate for measures to reduce import protection.

354. More generally, to avoid the creation of rents, all public aid to companies, when intended to compensate for the competitive disadvantages of local production in relation to foreign companies (*level playing field*), should be conditional on the sector concerned being opened up to competition.

Proposals :

15. Stepping up checks on compliance with price regulations, particularly on islands other than Tahiti.

16. In Tahiti and Moorea, target regulated prices on a more limited list of products.

17. Consider alternative support schemes for low-income households, to reduce windfall effects.

18. If regulated prices are to be maintained, it is preferable to set ceiling prices, at least for local products, rather than maximum margins.

19. Integrate the cost of labeling food products into the warehouse delivered price of PPNs, to neutralize its cost for importers.

20. Support farmers in reforming price regulations, notably through direct aid mechanisms.

21. Make public aid to local companies generally conditional on opening up the sector concerned.

5. IMPROVING THE POLYNESIAN TAX EXEMPTION SYSTEM TO TAKE ACCOUNT OF COMPETITIVE CONCERNS

355. In addition to appearing as a means of offsetting the high cost of inputs in certain sectors, which are penalized by import channels, tax exemption schemes can lead to the creation or reinforcement of dominant positions in the market concerned.

356. As a result, elements of competitive analysis could be integrated into the system, along with the

[152] https://www.tahiti-infos.com/Les-maraichers-du-fenua-opposes-a-la-liberation-des-marges- distributors_a180763.html.

impact on employment or the attractiveness of the country. Indeed, once dominant positions have been established, they lead to situations of rent and higher prices, which are unfavorable not only for local consumers, but also for the attractiveness of French Polynesia, in terms of tourism for example, and *ultimately* for employment.

Proposals :

22. Amend article LP 913-4 of the French tax code, which sets out the list of criteria to be taken into consideration to qualify for local tax exemption, by explicitly adding the competitive impact of the project. Given its expertise in this area, the Authority's opinion could be required in this case.

23. Eliminate the thresholds set out in article LP 916-1 of the French tax code, and the discrimination between eligible projects based on the amount of investment, to enable new players to enter the market or develop.

6. REFORMING FOREIGN INVESTMENT REGULATIONS

357. Foreign investment regulations in French Polynesia have become difficult to apply following court rulings. It would therefore be advisable to clarify the mechanism in a more clearly competitive sense, and to remove a certain number of barriers to entry into Polynesian markets. If the objective of public policy is economic growth and, *ultimately, the* development of the territory, it would indeed be appropriate to steer the control of foreign investments in a direction favorable to this development, and therefore to favor them to a large extent. From a competitive standpoint, the lack of guarantees for foreign investors on the feasibility and sustainability of their projects, a source of legal uncertainty, limits market entry opportunities and competition, to the sole benefit of local producers.

358. The following reform options are available:

- Precisely define the definition of foreign nationality under Polynesian law. In any case, the criterion of residence (and not nationality) could be retained, in line with international practice. Polynesia has no interest in further isolating itself from international investment circuits by opting for a definition that would reduce its attractiveness in the eyes of potential investors.
- Determining the level of shareholding above which investment projects require authorization. At first sight, the threshold corresponding to the blocking minority for public limited companies (SA), i.e. 33.33% of the share capital, can be retained. This is the level of shareholding at which the operator can exercise negative control (in the form of a kind of veto right) over the strategic decisions of the company concerned. A higher threshold, corresponding to 50% of the share capital, could also be envisaged, since it is only at this level of shareholding that the operator can exert a positive and active influence on the company's management and decisions.
- Determine the reasons for refusing an investment project. In any case, the only valid reason would seem to be that the project would undermine the economic sovereignty of the region. Below the threshold of 50% of share capital, this reason cannot be invoked. It would even be possible to consider authorizing all productive investments, insofar as they necessarily have local economic spin-offs (direct employment, intermediate consumption, tax contributions, final consumption). In this perspective, which would constitute a reversal of the analysis grid compared to current regulations, Polynesia would be well advised to introduce an advantageous tax system for this type of investment, in line with the objectives of boosting competition and economic development in the territory. Only would therefore be subject to a refusal decision, on the grounds of their dangerousness and uselessness in terms

of economic development.

- The list of sectors covered by foreign investment regulations should also be reviewed. For reasons of attractiveness and competition, it is not desirable that an investment in a non-strategic sector should result in a refusal. On the other hand, there is room for discussion as to whether sectors such as real estate should remain on the list. Foreign investment in this sector could, on the contrary, be an opportunity for development. The potential financial clout of foreign investors is likely to enable production to reach the critical size for which economies of scale and factor productivity are maximized, something that would be impossible to envisage in the absence of foreign investment.

Proposals :

24. Ease regulations on foreign investment, to increase competition in the local production of goods and services, except in certain strategic sectors, the scope of which would be re-evaluated regularly, or for purely speculative investments.

7. IMPLEMENT A SYSTEMATIC IMPACT ASSESSMENT AND EVALUATION OF REGULATORY MEASURES AFFECTING PRODUCT PRICES

359. The central finding of this opinion is that the issue of high living costs and lack of product quality and diversity is a matter of public policy. For the most part, it is not linked to exogenous factors (remoteness), but to taxes and customs duties, price regulation, or the determination of lists of products that may or may not be imported.

360. However, these policies do not always seem to be able to fulfill the functions assigned to them, due to the lack of sufficient definition of objectives *ex ante* and adequate evaluation *ex post*.

361. ***Ex ante***, when defining tools, an economic policy rule, known as Tinbergen's rule.[153] This is justified by the fact that targets must be achieved independently of one another, and that the *n* degrees of freedom to be attained (objectives) must be matched by *n* constraints (instruments). To put it another way, even if the effects of economic instruments are multiple and act on various variables, a single tool will be unable to effectively pursue several objectives at the same time, unless they are directly linked.

362. However, it would appear that, in the absence of a clear definition of expected objectives, many of the instruments used to manage the Polynesian economy are designed to achieve a variety of, even contradictory, goals. Moreover, the stakeholders themselves do not always share the same point of view on these objectives. Taxing imports, for example, does not simultaneously and effectively guarantee more local jobs, tax revenues, lower prices and a change in consumer behavior. Trade-offs are therefore necessary. Every regulation that has an effect on prices should therefore be accompanied by clearly defined and assessable objectives.

363. While economic policy measures often have a primary objective, they also have secondary effects on other variables (budgetary or redistributive, for example). In particular, they can have the effect of modifying the competitive structure of a market, as described for example in the case of tax exemption. Consequently, the competitive effects of normative texts in the economic field should be systematically addressed in an impact study.

364. ***Ex post, a*** widely accepted principle of public policy is the need for an objective assessment of its effectiveness (ability to achieve objectives) and efficiency (ratio between costs incurred and results obtained). In fact, the quality of a regulation cannot be assessed solely on the basis of

[153] NikolaasTinbergen, *On the Theory of Economic Policy* (1952).

the budgetary resources made available (in the form of spending or tax expenditure). However, current import and distribution regulations have a tendency to pile up, without being systematically and regularly evaluated and, where necessary, amended.

365. However, any measure that undermines the principle of freedom of pricing and trade, and therefore the constitutional principle of entrepreneurial freedom, should be subject to regular and comprehensive assessments, notably in the form of economic studies, to determine whether it should be retained, amended or even abolished.

366. Protectionist measures, in particular, should be assessed not only in terms of their ability to develop sustainable production, but also in terms of their impact on consumers. Otherwise, the objective of enabling local producers to improve their efficiency is not achieved.

Proposals :

25. Accompany each normative text relating to the administration of the Polynesian economy with a precise impact study, setting out its objectives (which must be precise and assessable), the instruments mobilized and their capacity to achieve these objectives, as well as the effects of the measure on competition.

26. Develop a systematic and regular assessment of all measures affecting competition (price regulation, import restrictions, barriers to market entry, etc.), particularly with regard to their effects on price levels or the quality of supply.

B. REMOVE BARRIERS TO ENTRY AND PROMOTE THE ENTRY OF NEW PLAYERS

367. While the high costs in French Polynesia are partly the result of objective factors, linked to specific geographical features, as well as regulatory barriers, the competitive structure of the markets concerned is also partly to blame. Distribution channels are complicated by the large number of intermediary players (forwarding agents, wholesalers); delivery times and storage conditions are sources of additional costs, and buyers are often dispersed and captive to excessively high prices. Each of the players in the logistics chain charges prices of varying levels, which are stacked on top of each other, and the end consumer suffers as a result. Added to this is the supremacy of a few players, in a large number of product markets and at all levels of the distribution chain.

368. In its decision-making practice, the Authority takes this context into account. A small island economy, like that of French Polynesia, structurally presents a high number of major monopolies or oligopolies, as producers fail to reach the minimum efficiency threshold required to achieve economies of scale. Combined with market protections, this characteristic could also give rise to collusive behavior between local operators. As a result, the authorities responsible for monitoring compliance with competition law have a specific remit. In particular, they must not stand in the way of local companies achieving efficiency gains, notably by cooperating to reduce the cost of access to a service (product marketing or imports, for example). On the other hand, a great deal of attention needs to be paid to certain behaviors that can take on particular importance, such as access to essential infrastructures (particularly in the presence of natural monopolies), refusal-to-sell practices (given the weight of importers, many of whom benefit from *de facto* or *de jure* exclusivities) or the vertical integration of companies. As a result, both in terms of merger control and the sanctioning of anti-competitive practices, behavioral remedies can take on great importance, particularly those that make access to a product or infrastructure compulsory for another company, whether a competitor or a new entrant to the

market.

369. However, public authorities are also in a position to prevent such situations and foster a dynamic local economy, by facilitating the entry and development of new players on the market, which constitute a source of competitive pressure for existing operators (whether actual or potential). Barriers to entry could therefore be removed or reduced, whether they be regulatory (introduced by public authorities), economic (linked to the characteristics of a sector) or strategic (linked to the behavior of players). The effectiveness of proposed regulatory reforms will also depend on the degree of competition in the economy. The more competitive the local market, the more positive the effect on prices, since players will be encouraged to win market share through innovation or price cuts.

370. In the case of PPNs, for example, today all players charge the maximum authorized margin, rather than seeking to increase their market share by selling below the ceiling price. The retailer simply seeks to negotiate the best possible margin with the wholesaler, without even considering the price he will charge, whereas by reducing his margins, he should in theory increase his sales. This is a tangible sign of the absence of competition. In the event of a general abolition of PPNs, the challenge would be to stimulate competition at the same time, so as to prevent retailers from being able to increase their margins and prices, to the detriment of consumers. Indeed, small retailers will not immediately consider themselves in a position to reduce their prices, given the ability of larger economic players to retaliate, and thus incur losses if they reduce their own prices. Accompanying measures will therefore be necessary to achieve a reduction in the price of free products in the medium term.

371. Opening up the market must therefore accompany, if not be a prerequisite for, regulatory reforms.

1. BOOSTING THE FREIGHT MARKET

372. The port is an essential regional infrastructure, and non-discriminatory access at a reasonable price is essential. Admittedly, approach costs in general, and freight costs in particular, have a relatively moderate impact on product prices (8% of the price of sales incl. VAT). However, on the one hand, this proportion is likely to be much higher for certain products, including basic necessities, as they present a high ratio of bulk to added value (building materials, flour or sugar, for example); on the other hand, transport costs are likely to rise in the future, particularly if the port of Papeete remains a secondary regional port in the light of global freight trends, forcing the bulk of goods to transit via a *hub in* New Zealand, for example, a source of higher costs and longer lead times.

373. The only solution in such a context, even if prices will remain structurally high given the isolation and small size of the Polynesian market, would be to perpetuate existing lines, or even attract new players by enabling the companies serving Papeete to achieve economies of scale. Today, however, only small and medium-sized container ships can access the port, not always at full capacity, and most of them leave empty. As the CTC stated in its 2018 report on the Port[154] "*while the enlargement of the Panama Canal has been known since 2007, the Port has still not made the choice between secondary port status or becoming a central hub for trade in the South Pacific, or deciding on another option, such as simply adapting its facilities to larger ships. The successive hesitations we have seen must now give way to long-term strategic choices*".[155]

[154] Chambre territoriale des comptes de Polynésie française, Rapport d'observations définitives, "Port autonome de Papeete", September 3, 2018.

[155] In this respect, the port of La Réunion, for example, has become a hub in the Indian Ocean, transiting goods from Asia.

Proposals :

27. Make a strategic choice, by developing the Port of Papeete, which will enable shipping companies to achieve economies of scale, ensure the continuity of the direct link and consequently control transport costs for consumer goods.

28. Examine ways of developing the Port's revenues to ensure that costs are not passed on to imports, and ultimately to consumers, particularly in terms of pricing its services (through the use of cost accounting to adapt tariffs to costs) and revising port occupancy charges (to bring them into line with local property market prices).

2. ENSURE MORE SYSTEMATIC COMPETITION BETWEEN REGULATORY MONOPOLIES AND OLIGOPOLIES

374. Regulatory measures such as price regulation or limiting the number of operators must remain the exception, in cases of clear market failure, particularly in situations of natural monopoly and very low price elasticity of demand.

375. While the strategic role of stevedoring in the import circuit (since 90% of freight is shipped by sea, and the use of this service is compulsory) may justify the introduction of safeguards, the protection afforded to the three operators seems excessive. The sector is characterized by an oligopoly that has been regulated since 1987, and whose management style has led to a proliferation of taxpayer-funded port infrastructures (tax exemption) and users (regulated, very high tariffs). As a result, there is no competition for the market (three incumbent service providers renewed in 2007 for 20 years, with no call for competition), nor on the market (regulated and identical tariffs for the three companies).

376. However, when public authorities wish to regulate a sector and ensure the continuity of public service activities, the choice is often made to entrust certain tasks to one or more designated operators. Economic analysis accepts such regulation, but only on condition that the absence of competition *in* the market is offset by competition *for* the market. In other words, it is imperative that the regulated monopoly or oligopoly operator(s) be regularly reopened to competition, to avoid the creation of a rent. For example, stevedoring could be delegated to a public service contract for a limited period (5 to 8 years), following a call for tenders. In this case, the question of crane ownership would have to be addressed. A change of delegatee, and hence competition, would be facilitated if the invitation to tender were limited to the management of equipment belonging to the delegating authority.

Proposals :

29. Ensure a competitive bidding process for stevedoring service providers at the next renewal of the agreement, with a tie-breaker based on financial criteria (level of fees paid to the Port) to ensure greater management efficiency.

30. Transfer responsibility for investments in stevedoring infrastructure to the Port, which would be made available to the operator on payment of a fee.

3. ENCOURAGING THE POOLING OF SMALL PLAYERS

377. The small size of the market makes it crucial for economic players to have access, at a reasonable

price, to a number of infrastructures and services, which they might otherwise be deprived of if they fail to reach critical mass. This is a prerequisite for stimulating competition (entry of new players, economies of scale). In the face of this handicap, mutualization can, under certain conditions, appear to be a satisfactory solution, as long as it complies with competition law and, in particular, the ban on cartels or abuse of a dominant position (limited exchanges on prices, no discriminatory access to the structure, etc.).

a) The producers

378. In many countries, including those of the European Union, the agricultural sector benefits from certain exemptions from competition law. The aim is to empower small, isolated producers in the face of powerful buyers, for example through the creation of cooperatives for the joint marketing of produce. It is also common practice in agriculture to encourage the structuring of supply chains and a certain pooling of functions (such as the purchase of inputs like seeds, fertilizers, animal feed or equipment), through producer organizations. Access to certain infrastructures or equipment can also be crucial (slaughterhouses, agricultural machinery, sea and land transport, etc.).

379. An initiative has been taken in French Polynesia in the agricultural field. This is mentioned by the CTC in its 2017 report on agricultural policy. It involves the creation of Kai Hotu Rau, a limited company in which the country holds a 49% stake, which acts as a sort of central purchasing office for small producers, carrying out various tasks (collection, cleaning and sorting, packaging, distribution), right through to marketing their products for Tahiti (which accounts for 55% of agricultural production). Its aim was to professionalize the sector and structure small producers, thereby ensuring regular supplies for distributors. After an eventful genesis and several years of dormancy, the company has been up and running since January 2016. However, it has come in for some fairly sharp criticism, as it is said to comprise mainly large-scale producers on its board of directors and to have a reduced activity (mainly the marketing of bagged lettuce). The farmers' unions consulted favored the cooperative option, as the involvement of a private player would above all lead to the payment of an additional intermediary. Another option would be to encourage small producers to pool their transport from the islands.

b) Retailers

380. The large number of independent retailers makes the question of their supply, which is not necessarily at the lowest cost, a delicate one. For example, when it comes to imports, they are not in a position to charter entire containers (which are much less costly than grouped shipments), or, at local level, to negotiate discounts based on volumes purchased. They even sometimes buy products from hypermarkets, which they then resell at a necessarily reduced margin. This is particularly true of retailers on islands other than Tahiti. These small businesses would probably be able to reduce their costs, either by importing directly, in order to limit the number of intermediaries, or by increasing their purchasing volumes and therefore their bargaining power.

381. To this end, the pooling of purchases appears to be a natural solution for small retailers. As a result, the players concerned would pay the same prices, and competition would be based on margins.

382. Moves in this direction have already begun in French Polynesia, but in the retail sector (with the creation of SNP for some of the U stores and Cap for the LS Proxi chains).

383. In some French overseas departments and territories (DROM), where the market structure is very similar, there have been experiments with grouping small independent retailers together for

purchasing purposes. In La Réunion, for example, the so-called "Bareigts-Fasquelle" report[156] mentioned the creation of a cooperative to pool supplies for small shops: *"This company, with around a hundred shareholders, each with one vote, acts as a central purchasing body for 1,500 items, i.e. the supply needs of a 100 m² distribution outlet, enabling collective negotiation to bring down the prices at which small shops are supplied. Although the creation of this structure is too recent to make a detailed analysis of its impact on prices and the long-term viability of small shops, your rapporteurs can only welcome this initiative and suggest, once a more complete assessment has been carried out, that it be extended to all French overseas collectivities".* A similar experiment has been carried out in Mayotte, with the support of the French government. It involves the creation of the Macodis cooperative: *"In 2015, Mayotte's OPMR commissioned a study into the feasibility of creating a platform for importing and wholesaling basic necessities in Mayotte. Indeed, the distribution of these products, particularly food products, is highly concentrated, with 60 outlets belonging to three groups, which account for 90-95% of sales (the Sodifram group alone for 70%), and over 3,000 small independent shops, which share the remaining 5-10% (the "doukas"). The latter mostly buy from the three dominant players, often at the same price as private customers, which results in high prices for basic products. What's more, while the major distributors control the logistics chain, chartering entire ships and building up stocks, the smaller ones, who have no cash flow, buy on a day-to-day basis, not according to the sales potential of their outlet, but according to their available funds. As a result, their sales margins are very low (around 3%). On the basis of this study, the Macodis cooperative was created, bringing together several retailers (13 to date) to pool their resources, give them negotiating power, free them from the main distributors and, ultimately, reduce prices and increase the quality of everyday goods. According to the person who supported the creation of this cooperative, it was a success which led to an increase in volumes and a drop in prices for products marketed by its members, but also to an increase in quality and variety, as well as a reduction in competitors' prices".*[157]

384. Such a strategy, which consists in increasing the purchasing volumes of small retailers to empower their purchases and reduce prices, could be envisaged in French Polynesia, where we find this dualism, with a high concentration of large food retailers and numerous but scattered small retailers. It appears that even modest volumes (from one container for imports) can generate substantial economies of scale.

c) Consumers

385. In his aforementioned speech[158] the interministerial delegate for competition in the overseas departments and territories indicated that the government was considering encouraging the creation of consumer cooperatives in the French overseas departments and territories, to buy products directly, outside organized channels. This could be of interest, particularly in sectors where local prices are high and where consumers already make direct purchases, notably via the Internet, but in a dispersed manner (e.g. car parts, books or leisure items). In such cases, it would be in their interest to pool their orders to obtain better rates, particularly for transport. Some local companies already offer forwarding services, to enable shipment to French Polynesia from websites that don't offer delivery to this territory, and a possible grouping of purchases, but they remain marginal.

386. The development of these purchases would boost competition in the product markets concerned. E-commerce is also a vector for the development of local employment, thanks to the logistics

[156] Report by deputies Erika Bareigts and Daniel Fasquelle of December 16, 2015 on the implementation of law no. 2012-1270 of November 20, 2012 on overseas economic regulation.
[157] ADLC Opinion No. 18-A-09 of October 3, 2018 on the competitive situation on the building materials markets in Mayotte and La Réunion.
[158] ADLC Opinion No. 18-A-09 of October 3, 2018 on the competitive situation on the building materials markets in Mayotte and La Réunion.

activities it generates.

387. The country could provide support to facilitate the grouping of individual imports online. This could take the form of facilitating customs procedures (with a single procedure for consignments of products falling under the same customs heading), rules for the application of postal duty-free allowances per consignee, etc. remaining unchanged. The French competition authority (Authority de la concurrence) recommended similar measures in a recent opinion on overseas France.[159]

Proposals :

31. Take stock of the Kai Hotu Rau company (activity, representativeness of membership) and, if necessary, redirect its action.

32. Experiment with other forms of mutualization, in particular cooperatives, aimed more at small agricultural producers, for example in terms of transport from the islands.

33. Study the creation of a cooperative to enable small retailers to pool their purchases.

34. Encourage the formation of consumer cooperatives for online group purchasing.

4. DISCOURAGING THE PRE-EMPTION OF LAND BY PRIVATE INTERESTS

388. According to many operators, the scarcity of land is an impediment to the development of new production activities, commercial premises or business premises (particularly for storage), and hampers the growth of their business. This scarcity is partly the result of strategies adopted by certain economic players to immobilize and pre-empt land.

389. To remove this obstacle to development, communes or the Pays could set up land reserves, or at least regulate the use of certain plots of land, for the establishment of business or agricultural zones, for example. The necessary tools are set out in the planning code and can be used when drawing up or revising general development plans (PGA). These include reserved rights-of-way (articles D. 111-4 and LP 113-9) and the possibility of using the right of pre-emption. The use, allocation and leasing of such land and premises should then be based on transparent, non-discriminatory criteria and take account of competition concerns, in order to encourage the development of new players.

390. It would also be beneficial to set up shared storage facilities on a public or private initiative, although particular attention needs to be paid to their governance, as companies marketing different and possibly competing products would have to coexist. In the agricultural sector, for example, the Chamber of Agriculture and Fishing in the lagoon has raised the possibility of pooling the storage of produce on the islands, prior to transport, in order to improve preservation and transport conditions.

Proposals :

35. Develop the creation of land reserves by the country or municipalities, or regulate the use of certain plots of land intended for the development of productive activities.

36. Implement strict, transparent rules for allocating these spaces, including competition concerns.

37. Examine the possibility of setting up shared storage areas.

[159] Opinion no. 19-A-12 of July 4, 2019 concerning the operation of competition in overseas France.

5. REFORMING THE REGULATION OF EXCLUSIVE IMPORT AGREEMENTS

391. On April 11, Francis Amand, Interministerial Delegate for Competition in Overseas France, proposed to the French National Assembly that de facto import exclusivities in French overseas departments and territories (de jure exclusivities are already prohibited) should be put to an end once and for all. He even plans to go further, proposing to simplify the sanction procedure, which has already been implemented on several occasions, and to extend the ban to franchise and license exclusivities (for the use of an industrial property right such as a trademark, a work of the mind or a patent).

392. Going against this trend, French Polynesia abolished this ban in 2018. The argument put forward in support of this abolition was as follows: in a small economy, exclusive import rights are the source of efficiency gains in distribution (logistics, promotion). While they eliminate intra-brand competition (since a brand is only marketed by one economic operator), they preserve inter-brand competition (between substitutable products from different suppliers), as each importer tries to impose the products of the brand it owns. Another argument is that, should an agreement prove problematic, it should be sanctionable under ordinary competition law, without the need to define an autonomous infringement, since by its very nature it falls within the scope of a cartel (it's an agreement between two players, a supplier and an importer) or a dominant position (if the product subject to exclusivity is not substitutable). In this case, the Authority would simply have to examine the proportionality between the efficiency gains of exclusivity and the competitive risk.

393. However, these arguments, based on the existence of economies of scale in distribution and the maintenance of inter-brand competition, are greatly diminished in a small island economy.

394. ***Inter-brand competition is*** inherently weak. In a small economy, the number of substitutable products from competing brands is small. According to the European Commission's guidelines on vertical integration[160] inter-brand competition is insufficient if one brand accounts for more than 30% of a market share, *a fortiori* if the position of the various importers on the market is more or less similar in terms of market share, capacity and distribution network. The wholesaler then has considerable latitude to raise prices. This is a frequent occurrence in French Polynesia. In this case, the Commission recommends stimulating intra-brand competition, which is incompatible with maintaining exclusive import agreements.

395. ***Efficiency gains are*** uncertain. While, in principle, exclusivity brings logistical productivity gains, these can be countered by contrary incentives. For importers, exclusivity protects their margins. They therefore have the effect of dissuading them from putting the supplier with whom they have an agreement in competition with competing exporters selling other brands, whereas it should be precisely the added value of an importer to seek out the best supplier. As for suppliers, while most of them practice exclusive distribution, they have no interest in lowering their prices either, knowing that the margin will be retained by the wholesaler and thus have no effect on their sales volume. Situations are therefore relatively fixed, and penalize competition.

[160] European Commission, Guidelines on Vertical Restraints, 2010/C 130/01, § 151 to 167.

396. ***As regards the redistribution of any gains to consumers,*** the incentives are weak. Thus, even if these vertical agreements were able to generate efficiency gains and therefore lower costs for the import channel (increasing total welfare), it is in reality highly unlikely that the product monopoly would have any incentive to redistribute these gains to the consumer, in the absence of sufficiently strong inter-brand competition on substitutable products. In other words, gains are captured upstream, without being passed on downstream. Some importers are also exclusive distributors for several brands of substitutable products. In this case, inter-brand competition is distorted, as the importer has no interest in passing on price reductions granted by one of his suppliers, since such a reduction would have the main effect of reducing sales of other products for which he is also the exclusive distributor.

397. This means that exclusive agreements pose problems even when they are not subject to sanction under competition law. They distort competition and create major distortions in the incentives of players, for example when they reduce importers' incentives to compete with suppliers, and have structural effects by freezing competition. And in any case, demonstrating an anti-competitive practice is complex, demanding and the procedure lengthy, given the standard of proof required. What's more, if it only concerned one product at a time, it would be limited in scope.

398. For all these reasons, it was decided to reverse the burden of proof in the overseas territories, making such exclusivities prohibited *per se*, unless the beneficiary can demonstrate that they benefit the consumer (in terms of price, quality or additional services, for example). Indeed, action in this area appears both imperative and necessary in these territories, given the structural weakness of competition, which limits inter-brand competition and transforms these exclusivities into an addition of monopolies. The inflationary effects of exclusivity agreements in French Polynesia have been confirmed by numerous testimonials from local players.

399. It seems essential to the Authority to assess the effects of removing the *per se* ban on exclusive import agreements and, unless a case-by-case demonstration of a benefit for the Polynesian economy and consumers can be made, to reinstate their prohibition in principle.

400. If the government did not wish to reinstate this ban, it would seem desirable, *at the very least,* either to prohibit the combination of import and distribution activities, unless specific commitments are made to guarantee non-discriminatory distribution of the products concerned, or to impose a separation of accounts and management of groups with both activities, as is the case in network industries. But this solution would appear to be particularly complex and tricky to implement for companies that may be modest in size.

401. It would also be essential for companies to be fully transparent about the de jure or de facto agreements from which they benefit, so as to have the means to analyze these situations and more effectively detect any resulting harm to competition.

Proposals :

38. Compel players to make public, or at the very least communicate to the Authority, all their de jure or de facto import exclusivities.

39. Prohibit the combination of the activities of importing products covered by import exclusivity and retail distribution of the same products, or at the very least impose an accounting separation between these activities, and prohibit any importer concerned by regulation from discriminating between buyers (including those from other countries).

40. In any case, assess the effects of abolishing the per se ban on exclusive import agreements and reinstate it if no interest for the Polynesian economy or the consumer is demonstrated.

6. REINSTATE THE REVIEW OF DOMINANT POSITION SITUATIONS RAISING COMPETITION CONCERNS DUE TO HIGH PRICES OR MARGINS

402. In the food retail sector, the imbalance between retailers is such that *a priori* control of retail space is insufficient to ensure a competitive balance. Given the sometimes pre-eminent local positions and high barriers to entry, it would be advisable to equip ourselves with the means to examine situations of dominance raising competition concerns, should this situation be the cause of particularly high prices or margins. Indeed, competing distributors are more likely to redistribute their surplus to consumers in the form of lower prices, in order to increase their market share. Rebalancing the competitive situation would therefore create a virtuous circle.

403. Structural injunctions, which can go as far as imposing asset disposals on dominant groups, even in the absence of sanctioned and repeated abuse of a dominant position, exist in the DROMs and New Caledonia, whose market structure is similar. In French Polynesia, on the other hand, comparable provisions introduced in 2015[161] were abolished in 2018.[162] However, it appears to be a strong demand among Polynesian importers and distributors.

404. Even though this mechanism has never yet been applied, the French competition authority (Authority de la concurrence métropolitaine) considered, in a recent opinion on overseas France, that it *"seems particularly well-suited to calling into question acquired situations"*, and would even like to amend the text of the law to facilitate its use.[163] In any case, even if only potential, this mechanism has a dissuasive effect: as the implementation of structural injunctions implies demonstrating the existence of high prices in a sector where a player is dominant, it is in his interest not to charge exorbitant prices.

Proposals :

41. Reinstate the mechanism for examining situations of dominance that raise competition concerns in the retail sector and may lead to structural injunctions.

C. STRENGTHEN THE CULTURE OF COMPETITION THROUGH PRICE TRANSPARENCY AND STAKEHOLDER INVOLVEMENT

405. French Polynesia seems to have a relatively undeveloped competition culture. On an institutional level, competition law and the creation of the Authority are still recent (2015), and in the behavior of players, comparing prices, the culture of volume, reporting anti-competitive behavior to the DGAE and the Authority, or putting suppliers in competition, do not always seem natural. However, prices will only be able to fall, quality to improve or market access to be facilitated if all players in the import and distribution circuit are involved in the search for low prices. Otherwise, the actions taken run the risk of leading only to a reconstitution of the margin at another point in the circuit, with no effect on the consumer. Various measures appear likely to reinforce this culture of competition.

[161] Local law no. 2015-2 of February 23, 2015.
[162] Local law no. 2018-31 of August 9, 2018.
[163] Opinion no. 19-A-12 of July 4, 2019, pages 47 and 48.

1. STRENGTHENING THE INSTITUTIONAL EFFECTIVENESS OF CONTROL AND SANCTIONING CONTENTIOUS BEHAVIOR

406. When examining any request for an opinion, the investigating department gathers a large amount of information, some of which may lead it to question the existence of anti-competitive behavior. Such behavior may fall within the scope of both antitrust law and the abuse of a dominant position. These situations, denounced by a number of operators, are not discussed in this opinion, as they would be subject to appropriate legal action. A reminder of the legal framework may nevertheless prove useful.

407. The control of practices is the responsibility of an independent body, the Authority, with regard to the law on cartels and abuse of dominant positions, and of a national department, the DGAE, with regard to compliance with the provisions of articles LP 410 and LP 420-1 of the French Competition Code concerning restrictive or unfair commercial practices.[164] Other practices may be sanctioned by a commercial or civil judge. Article LP 420-21 lists practices deemed abusive or discriminatory, such as false commercial cooperation, threats of delisting or abusive termination of commercial relations. Civil proceedings relating to these practices are initiated by the public prosecutor or by the victims of these practices, who may nevertheless refer the matter to the DGAE for investigation, whose conclusions may be submitted to the court.

408. The aim of the provisions on transparency and fair trading was, in the spirit of this text, as evidenced by the debates in the Assembly of French Polynesia, to rebalance trade relations and the balance of power, to the benefit of suppliers, in the face of the pressure and market power of supermarkets.[165] For the DGAE's competition unit is responsible for monitoring price regulation throughout French Polynesia. According to the DGAE, its checks are aimed in particular at ensuring the transparency of commercial relations and the reality of services rendered in return for financial advantages granted by suppliers (commercial cooperation agreements). The administration also conducts investigations into the prohibition of discounts for PPNs and PGCs, and payment terms. Since the adoption of this law, it has initially taken educational measures (reminders of the regulations, information meetings with operators such as fresh produce producers or importers) and asked inspected operators to take corrective measures. Subsequent inspections will ensure that any difficulties identified are corrected by the industry.

409. The administrative and legal arsenal is now in place in French Polynesia. It would appear, however, that the reporting of illicit practices to the DGAE and the Authority is relatively rare, perhaps due to the lack of a deeply rooted competition culture among economic players. However, it is in the general interest, as much as in the interest of the victims, that these practices should be punished, as they lead to the capture of surplus by a few companies, prevent the development of existing businesses and dissuade entrepreneurs from launching new activities. They therefore have an impact not only on purchasing power, but also on growth and employment.

410. Setting up an online platform for reporting anti-competitive practices within each structure would undoubtedly facilitate action by victims and ensure better centralization of information.

411. Cooperation between the DGAE and the Authority, whose respective roles are not always clearly distinguished by businesses and consumers, could also be strengthened, in particular to better guide the reporting of cases brought to the attention of the independent authority or

[164] Article LP 410-1er prohibits discounts on PPNs and PGCs in any form whatsoever. Articles LP 410-2 to L. 410-8 concern the transparency of commercial relations between professionals. Article LP 420-1 prohibits the direct or indirect imposition of a minimum resale price for a product or good.

[165] See, for example, the CR of the Committee on the Economy, Finance, the Budget and the Civil Service of October 17, 2014 on the examination of the draft law of the country regulating commercial practices, page 4/11.

administrative department.

Proposals :

42. Set up an online platform within the DGAE for reporting anti-competitive practices.

43. Implement a cooperation charter between the DGAE and the Polynesian Competition Authority, to enable the systematic transmission of clues and alerts relating to anti-competitive practices under the jurisdiction of the other institution.

2. PRICE MONITORING AND ADVERTISING

412. In the French overseas departments and territories (DROM), seven price, margin and income observatories (OPMR) were set up by Decree no. 2007-662 of May 2, 2007, with the mission of analyzing the level and structure of prices and incomes, and providing the public authorities with regular information on their evolution. In New Caledonia, an ambitious system was implemented in 2013, the Observatoire des prix, whose website (https://observatoiredesprix.nc) enables interactive comparison of prices by store. Quarterly price surveys are carried out by agents from the Department of Economic Affairs (DAE) and automatically supplemented by data transmitted by retailers of over 350 m². Consumers can report discrepancies via a toll-free number and a message service. The aim of making this information available is to enable consumers to "buy better" by comparing prices by establishment.

413. In French Polynesia, a similar attempt was initiated in 2016 by the DGAE, which for around a year compared the prices of various everyday consumer products in some twenty outlets on the island of Tahiti, in order to stimulate competition. However, this system (the "météo des prix"), which used to be monthly and public, was only partially relaunched in March 2019 and focuses on a reduced number of products, allowing players to skew the system by charging call prices on the products on the list.

414. However, reducing the cost of consumer information appears necessary. Consumers rarely make the effort to compare prices themselves, and are relatively reluctant to change their habits. Moreover, the weight of PPNs, whose prices are often uniform (whereas they should only constitute a ceiling), reduces the incentive to make such comparisons. Faced with a certain inertia on the part of consumers, it is important that access to price information be easily accessible and comparable. Consumers would then be in a position to easily compare the prices of different brands, thus encouraging manufacturers and distributors to lower their prices.

415. This information could take the form of an online, easy-to-use and regularly updated price comparison tool for the various stores. To reduce the administrative burden, at least the major retailers could communicate their figures themselves and automatically feed the application. The administration would, at least for these chains, have a simple monitoring role. Consumers, for their part, could report discrepancies between prices displayed on the site and in-store prices, and thus contribute to checks. In the case of small retailers, regular price checks could be carried out to avoid adding to their administrative burden.

416. Admittedly, in theory, the competitive effects of price transparency are ambiguous, as they can facilitate the implementation and stability of tacit or explicit agreements between operators (the other cartel members having all the information they need to sanction those who deviate from the agreed price and take retaliatory measures). However, such an argument is relatively theoretical when it comes to everyday consumer products, whose prices are subject to compulsory display and can therefore in reality already be monitored by competitors, especially the larger ones, who find it easier to mobilize dedicated staff to take price readings, whereas such work is more complicated for consumers or independent stores. In this case, publication

would reinforce the power of small players and consumers, who would benefit from the same information as large retailers.

417. The difficulty remains, however, in precisely defining the list. In the case of a small number of products, retailers may adopt strategic behaviors, such as reducing prices only on products on the list in order to attract consumers, thus using the list for advertising purposes. The list must therefore be sufficiently broad to give an objective picture of the pricing policies of individual stores or chains.

Proposals :

44. Maintain and develop the price observatory ("météo des prix"), by giving it a regulatory basis, providing for regular updates (at least monthly), expanding the panel of products compared and facilitating access to information (by creating a dedicated website).

3. STRENGTHENING THE CONSUMER MOVEMENT

418. The organization of import and distribution channels described in this opinion penalizes the consumer, who does not benefit from the best prices or a wide range of products on offer. On the one hand, regulations have the effect of restricting imports or making them more expensive, and on the other, the structure of the market does not encourage players either to improve their efficiency or to redistribute any surplus to the end consumer.

419. However, Polynesian consumers seem particularly resigned to this state of affairs. They don't make strong claims against the high cost of living, as may be the case in the French overseas departments and territories (Reunion Island and the West Indies in particular), seem to accept high prices and are even reluctant to change their consumption habits, often preferring the historical or usual operator. However, if consumers were to band together to denounce certain situations (margins or retail prices), they would undoubtedly be able to put this concern on the political agenda, as was the case in the DROMs in 2009, leading to the adoption of the Lurel law in 2012.[166]

420. In particular, a determined consumer association capable of investigating pricing practices would be in a position to draw the attention of economic players and public authorities. However, the Institut de la Consommation, which used to be a public administrative body identified by the public (with a special welcome and media coverage through information campaigns, particularly on television), has been integrated into the DGAE, which also deals with consumer affairs, but has a lower profile and less scope for action than a public body.

421. The main consumer association, Te Tia Ara, for its part, has relatively limited resources. In 2018, however, it received a grant of 6.5 million F CFP from the country for the first time, to finance projects including a study on vehicle costs published in 2019. The association nevertheless regrets that the resources devoted to consumer information are limited, as is the legal support in the event of litigation.

422. To improve this situation, funding could be made permanent through an *ad hoc* budget line. While maintaining project-based funding would appear to be virtuous for public finances, it remains important that the public information mission or legal aid in the event of litigation should also be supported. Budgetary support could possibly be accompanied by the provision by the Pays of dedicated staff, on a one-off or more permanent basis, if necessary on a part-time basis, which is legally authorized in the case of a mission of general interest.

[166] Law n° 2012-1270 on overseas economic regulation and various provisions relating to overseas France.

423. Other avenues can be explored to strengthen the action of these associations:

- give consumer associations the opportunity to note material facts themselves, or *at the very least* to have them noted by sworn government officials, e.g. price displays in a shop;
- allow consumer associations to refer matters to the APC for an opinion (it can already do so in the case of anti-competitive practices);
- give consumer associations the right to obtain documents or information from companies in the course of their investigations, where appropriate through the intermediary of DGAE agents.

Proposals :

45. Provide direct or indirect funding for consumer associations.

46. Provide consumer associations with broader powers (in particular, the ability to carry out or request observations, the ability to obtain documents through the DGAE and the right to refer matters to the Polynesian Competition Authority for an opinion).

Deliberated on the oral report by Antoine Callot, rapporteur, and the intervention of Gwenaëlle Nouët, general rapporteur, by Jacques Mérot, *chairman*, Maiana Bambridge and Julien Vucher-Visin, *members*.

The session secretary, The Chairman,

Sabrina Emen Jacques Mérot

SUMMARY OF PROPOSALS

I: ASSESSING AND REFORMING IMPORT REGULATIONS

Remove non-tariff barriers to imports and revise the agricultural quota policy

In general :

1. Eliminate non-tariff barriers to imports (quotas, bans, etc.), replacing them where necessary with tariff barriers.
2. Conduct a standard-by-standard review of applicable regulations on building materials, construction rules and health regulations, to assess whether each should be maintained in full, adapted or abolished to take account of the specific features of French Polynesia.

In agriculture :

3. Primarily, abolish import quotas, if necessary by replacing them with conditional public subsidies for farmers.
4. In the alternative :
   - Revise the method for determining consumption forecasts, in a dynamic way, to allow for an increase in quantities consumed.
   - Rigorously monitor production forecasts and their actual achievement.
   - Closer monitoring of the cost price of agricultural production, for example through the introduction of a price reference system.
   - Introduce qualitative factors (product maturity, organic production) and not just quantitative ones to determine quotas.
   - Clarify and regularly revise the quota allocation key between importers and wholesalers, making it dependent on the share of local production sold by each importer, possibly combined with other agricultural policy objectives (organic farming, etc.), in order to maintain an incentive to favor local production.
   - Introduce flexibility into the import system, allowing all quotas to be used up.

Reduce tariffs, especially for neighbouring countries

5. If necessary, reduce customs duties from neighbouring countries under free-trade agreements, by aligning them with the rates applicable to products originating in the European Union.
6. Favoring the taxation of specific goods (e.g. tutelary, ostentatious, contrary to health policy).
7. Eliminate distortions between local production and imports when it comes to taxes designed to protect public health.

Reforming the local development tax

Principal function :

8. Eliminate the permanent nature of the TDL and replace it with temporary protection for infant industries only, for example for a non-renewable period of 3 to 5 years.
9. Consider more permanent protection for strategic products only, or in the event of the creation of a new sector.
10. Abolish the TDL on goods whose consumption we want to limit (sugary and alcoholic products), even if it means replacing it with other taxes, to avoid giving these goods an advantage over local production.

Alternatively, in the event of a permanent TDL :

11. Introduce compensatory measures for all protective measures, whether temporary or not, based on verifiable criteria linked to performance, innovation, the creation or maintenance of supply chains, the safeguarding or creation of jobs, or the incorporation of local inputs into the production process.
12. Determine a minimum "transformation rate" or "local added value" for protected products, as local production cannot simply consist of the assembly or repackaging of imported products, with no real added value.
13. Simplify and lower rates to levels that remain compatible with the competitive operation of markets (for example, three levels of protection: a standard rate of 30 %; an exceptional rate of 50% and a reduced rate of 15%).
14. Make the tariff headings on which the tax is based more precise, so as to be able to determine the products taxed more accurately and avoid taxing products not manufactured locally.

Substitute alternative support mechanisms for import and price regulation

15. Stepping up checks on compliance with price regulations, particularly on islands other than Tahiti.
16. In Tahiti and Moorea, target regulated prices on a more limited list of products.
17. Consider alternative support schemes for low-income households, to reduce windfall effects.
18. If regulated prices are to be maintained, it is preferable to set ceiling prices, at least for local products, rather than maximum margins.
19. Integrate the cost of labeling food products into the warehouse delivered price of PPNs, to neutralize its cost for importers.
20. Support farmers in reforming price regulations, notably through direct aid mechanisms.
21. Make public aid to local companies generally conditional on opening up the sector concerned.

Improving the tax exemption regime to take account of competitive concerns

22. Amend article LP 913-4 of the French tax code, which sets out the list of criteria to be taken into consideration to qualify for local tax exemption, by explicitly adding the project's competitive impact. Given its expertise in this field, the Authority's opinion could be required in this case.
23. Eliminate the thresholds set out in article LP 916-1 of the French tax code, and the discrimination between eligible projects based on the amount of investment, to enable new players to enter the market or develop.

Reforming foreign investment regulations

24. Relax regulations on foreign investment, to increase competition in the local production of goods and services, except in certain strategic sectors, the scope of which would be assessed regularly, or for purely speculative investments.

Implement a systematic impact assessment and evaluation of regulatory measures affecting product prices

25. Accompany each normative text relating to the administration of the Polynesian economy with a precise impact study, listing its objectives, which must be precise and assessable, the instruments mobilized and their capacity to achieve these objectives, as well as the effects of the measure on competition.
26. Develop a systematic and regular assessment of all measures affecting competition (price regulation, import restrictions, barriers to market entry, etc.), particularly with regard to their effects on price levels or the quality of supply.

II: REMOVE BARRIERS TO ENTRY AND PROMOTE THE ENTRY OF NEW PLAYERS

Boosting the freight market

27. Make a strategic choice, by developing the Port of Papeete, which will enable shipping companies to achieve economies of scale, ensure the continuity of the direct link and consequently control transport costs for consumer goods.
28. Examine ways of developing the Port's revenues to ensure that costs are not passed on to imports, and ultimately to consumers, particularly in terms of pricing its services (through the use of cost accounting to adapt tariffs to costs) and revising port occupancy charges (to bring them into line with local property market prices).

Ensure more systematic competition between regulatory monopolies and oligopolies

29. Ensure a competitive bidding process for stevedoring service providers at the next renewal of the agreement, with a tie-breaker based on financial criteria (level of fees paid to the Port) to ensure greater management efficiency.
30. Transfer responsibility for investments in stevedoring infrastructure to the Port, which would be made available to the operator on payment of a fee.

Encouraging the pooling of small players

31. Take stock of the Kai Hotu Rau company (activity, representativeness of membership) and, if necessary, redirect its action.
32. Experiment with other forms of mutualization, in particular cooperatives, aimed more at small agricultural producers, for example in terms of transport from the islands.
33. Study the creation of a cooperative to enable small retailers to pool their purchases.
34. Encourage the formation of consumer cooperatives for online group purchasing.

Discouraging the pre-emption of land by private interests

35. Develop the creation of land reserves by the country or municipalities, or regulate the use of certain plots of land intended for the development of productive activities.
36. Implement strict, transparent rules for allocating these spaces, including competition concerns.
37. Examine the possibility of setting up shared storage areas.

Reforming the regulation of exclusive import agreements

38. Compel players to make public, or at the very least communicate to the Authority, all their de jure or de facto import exclusivities.
39. Prohibit the combination of importing products covered by an import exclusivity and retailing these same products, or at the very least impose an accounting separation between these activities, and prohibit by regulation discrimination between buyers (including those from their own group).
40. In any case, assess the effects of abolishing the *per se* ban on exclusive import agreements, and reinstate it if no interest for the Polynesian economy or the consumer is demonstrated.

Reinstate the review of dominant position situations raising competition concerns due to high prices or margins

41. Reinstate the mechanism for examining situations of dominance raising competition concerns in the retail sector, and which could lead to structural injunctions.

III: STRENGTHENING THE COMPETITION CULTURE THROUGH PRICE TRANSPARENCY AND STAKEHOLDER INVOLVEMENT

Strengthening the institutional effectiveness of control and sanctioning contentious behavior

42. Set up an online platform within the DGAE for reporting anti-competitive practices.
43. Implement a cooperation charter between the DGAE and the Polynesian Maritime Authority.

to enable the systematic transmission of indications and reports of anti-competitive practices to the other institution.

Price monitoring and advertising

44. Maintain and develop the price observatory ("météo des prix"), by giving it a regulatory basis, providing for a regular update frequency (at least monthly), expanding the panel of products compared and facilitating access to information (by creating a dedicated website).

Strengthening the consumer movement

45. Provide direct or indirect funding for consumer associations.

46. Provide consumer associations with broader powers (in particular, the ability to carry out or request observations, the ability to obtain documents through the DGAE and the right to refer matters to the Polynesian Competition Authority for an opinion).